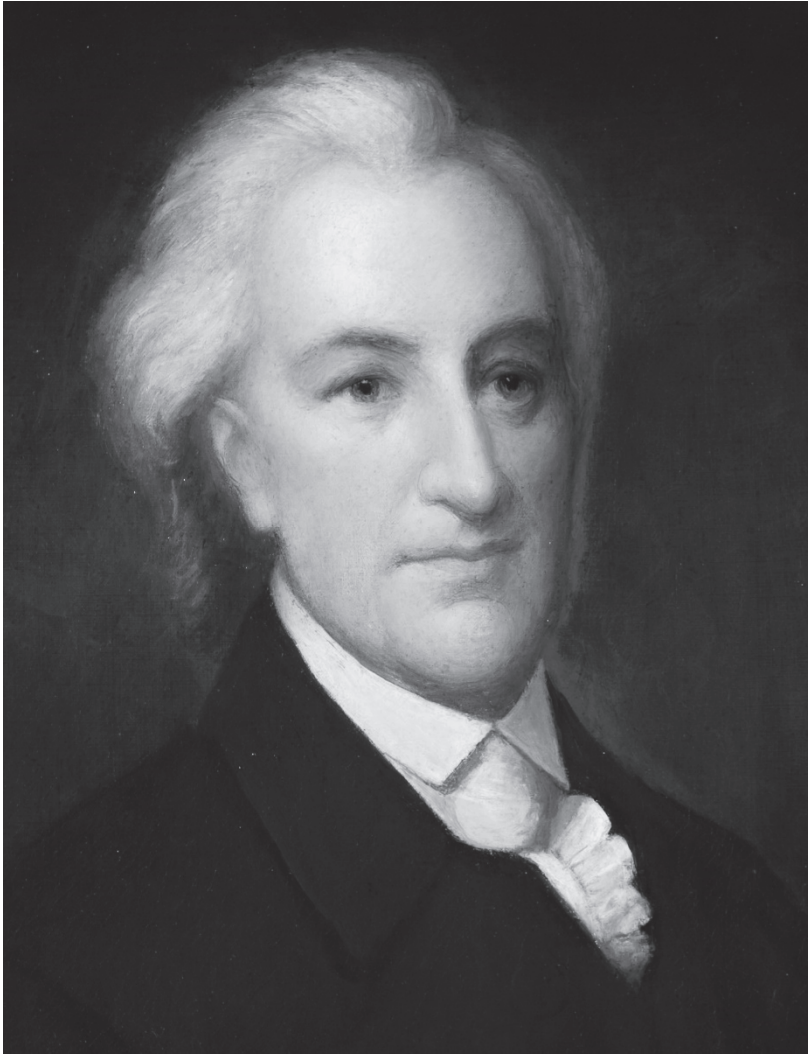


The
COMPLETE WRITINGS
and
SELECTED CORRESPONDENCE
of
JOHN DICKINSON

Volume Two • 1759–1763



The
COMPLETE WRITINGS
and
SELECTED CORRESPONDENCE
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JOHN DICKINSON

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Editor

Jane E. Calvert

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Christopher F. Minty

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To
THE AMERICAN PEOPLE

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JANE E. CALVERT
Chief Editor
March 2021

INTRODUCTION

The years covered in *Volume Two of The Complete Writings and Selected Correspondence of John Dickinson*, 1759 through 1763, show John Dickinson (JD) at the beginning of his long career as jurist and politician. Only two years past his legal training at the Middle Temple in London, his Philadelphia practice was thriving. He continued taking routine cases in the courts of Pennsylvania and the Three Lower Counties (Delaware) concerning wills, deeds, ejectments, trespass, debt recovery, mortgage redemption, and replevins. He also served as defense attorney in the trial of Joseph Jordan, the stepson of leading Philadelphia Quaker Israel Pemberton, accused of murder, and undertook legal work for the Society of Friends' Public School and the London Land Company.¹ In these often-cryptic legal documents, readers will find enlightening glimpses into JD's jurisprudence, the expanse of his knowledge in the copious references to legal texts, and his compassion for his clients. His continued work in the Admiralty Court on behalf of merchants inspired his first known political essay, "Reflections on the Flag of Truce Trade in America," arguing for the legality of that trade unimpeded by arbitrary royal declarations.² Though the role of the Vice Admiralty Court was not yet problematic for colonists as it would become with the passage of the Stamp Act in 1765, this essay demonstrates JD's sense that American rights of trade were not always compatible with British imperial policy and must be defended.³

These years mark a significant professional development. In 1759, JD was elected to his first public office—as a representative from Kent County to the legislature of the Three Lower Counties on Delaware.⁴ Though there are no surviving minutes from these early legislative sessions, some intriguing materials remain extant, including the election returns, JD's first-known writing on a House committee, and his report of members' expenses.⁵ The following year, he was reelected and named speaker of the Assembly.⁶ Under his leadership, the House passed legislation that was likely unique in

¹ See docs. 2:36, 2:57–59, and 2:33–34, respectively.

² See doc. 2:28.

³ For a discussion of the flag-of-truce trade and related case notes, see *Volume One*, 292–361.

⁴ See doc. 2:12.

⁵ See docs. 2:11, 2:21, and 2:13, respectively.

⁶ See docs. 2:24 and 2:25.

the colonies, an act to protect free Black and mixed-race people from unlawful enslavement.

In spring 1762, JD was chosen in a special election as a representative from Philadelphia County to the Pennsylvania Assembly, then reelected in the regular election the following autumn.⁷ He served continuously through September 1765, taking an active role in routine committee work and drafting legislation. These first terms in both the Delaware and Pennsylvania legislatures were defined by the French and Indian War. Where the Assembly of the Lower Counties freely allocated what funding it could afford for defense, the Pennsylvania Assembly had been locked in battle with the Penn family over whether their lands should be taxed for that purpose at the same rate as other property owners. The result was that funding did not materialize and the western counties were left vulnerable to Indian attacks, which escalated after the peace with the advent of Pontiac's War. Despite JD's friendship with the proprietor, Thomas Penn, he advocated strongly against his family for equal taxation. The present volume takes readers to the beginning of the Paxton Riots, in which a group of frontiersmen slaughtered peaceful Indians and threatened to march on Philadelphia. JD was on the committee that drafted the Assembly's message to Governor John Penn after receiving news of the first attack.⁸ These events set the scene for Pennsylvania's 1764 constitutional crisis, when a faction, led by Benjamin Franklin and resisted by JD, attempted to abolish the province's charter. JD's activities as legislator during these first terms are listed in the Appendix (pp. 393–96).

There are few extant documents in these early years that provide insight into JD's personal life. Three commonplace books show his method of study, his interest in current events and remarkable occurrences, and the impressive breadth of his literary interests.⁹ Not only did JD enjoy reading poetry, he frequently attempted his own verse, the first instance of which is found in 1759, when he wrote "A Song" to an unnamed, and presumably unrequited, love interest.¹⁰ Because relatively little correspondence from this period remains, all extant items have been included. Most notable are those to his mother, Mary Cadwalader Dickinson, which, like his letters to her

⁷ See docs. 2:43 and 2:55.

⁸ See doc. 2:86.

⁹ See docs. 2:26, 2:27, and 2:87, respectively.

¹⁰ See doc. 2:16.

Introduction

from London (see *Volume One*), are affectionate and filled with discussion of current events. Along with news of family and friends and expression of concern for her health, readers will learn about, among other things, that JD attended the 1762 Treaty at Easton to settle the 1737 “Walking Purchase” with the Delaware Lenape Tribe; prospects for peace with the reinstatement of William Pitt as secretary of state; that JD was named a director of the Library Company of Philadelphia; and details of the Battle of Bushy Run.¹¹ Readers will hear Mary’s voice for the first time, writing to her son in October 1762 with concern about a yellow fever outbreak in Philadelphia.¹² Correspondence with Thomas McKean and George Read show warm, life-long relationships that were both personal and professional, as they helped each other with political and legal work and planned vacations together. The volume closes with a particularly charming letter to a “Young Gentleman” offering advice on legal training, giving readers a view of how JD mentored the young people in his life and further detail about his habits at the Middle Temple.¹³

This period was also defined by loss that affected JD personally and professionally. Within the space of one year, three important male figures died. His father, Samuel Dickinson, died in July 1760; George II died in October 1760; and his mentor, John Moland, died in December 1761. In each instance, documents followed. JD likely authored the obituaries for his father and Moland.¹⁴ After his father’s death, Mary remained at Poplar Hall, the family estate outside Dover, Del., for over eighteen months until running the plantation became too much for her, at which point JD and his brother Philemon Dickinson advertised it for rent with a detailed description.¹⁵ And in response to Mary’s feeling burdened by their “family” of slaves, JD responded, agreeing that they should sell them only if the slaves themselves desired it.¹⁶ After Moland’s death, his large family struggled with internal strife and finances, frequently turning to JD for moral and financial assistance. JD’s grief at losing Moland was still palpable one year later, when he published a poem to commemorate the occasion.¹⁷ With the death of the king, difficulties arose in

¹¹ See docs. 2:47, 2:63, and 2:76, respectively.

¹² See doc. 2:56.

¹³ See doc. 2:98.

¹⁴ See docs. 2:23 and 2:29.

¹⁵ See doc. 2:41.

¹⁶ See doc. 2:78.

¹⁷ See doc. 2:60.

John Dickinson Writings and Correspondence

the provincial governments, prompting JD to write documents on judicial tenure and validity of court proceedings.¹⁸

Materials in *Volumes One* and *Two* of this edition, most never published and many unknown or illegible and thus unstudied, provide students of colonial and Revolutionary America with the untapped resources about the man who was to lead efforts to unify the country in resistance to Britain in the decade prior to independence.

With this volume, the John Dickinson Writings Project (JDP) welcomes two new full-time staff members. Managing Editor Christopher F. Minty comes to us from the Adams Papers at the Massachusetts Historical Society. He brings with him a sharp eye, boundless energy, and a keen sense of commitment to the highest standards of documentary editing. Under his management, the JDP has never proceeded so efficiently. Assistant Editor Ellen C. Hickman joined us towards the end of work on this volume, having spent the last fourteen years at the Papers of Thomas Jefferson: Retirement Series. Her experience, sure-footedness, and enthusiasm have already been a boon to the project. We bid farewell to Assistant Editor Alicia K. Anderson with gratitude for her work.

During work on this volume, the Editors confronted two inevitable pitfalls of documentary editing—the discovery of errors in the previous volume and the surfacing of new documents too late for inclusion in the first two volumes. At various points, documents came to light that warranted inclusion and changed analysis of existing documents. But with pandemic restrictions preventing a trip to the archives and little leeway to make substantive emendations late in the process, only a few small changes were incorporated. Readers should also be aware that a number of cross references in *Volume One* to documents in *Volume Two* are now inaccurate. The Editors regret the inconvenience these matters cause readers and will no longer include cross references to future volumes. This and future volumes will also contain an appendix with errata. When warranted, there will also be catalogues of omitted documents and select documents transcribed and annotated. All changes and additions will likewise be made in the digital edition.

¹⁸ See docs. 2:30 and 2:31.

EDITORIAL METHODOLOGY

This edition seeks to provide the reader with documents that appear as true to the original as possible while also being accessible and a scholarly apparatus that gives the reader the historical and literary context to understand the import of the documents, both individually and collectively. The aim of this edition is not to put forth the definitive interpretation of JD's writings, but rather to facilitate new conversations on topics beyond what the Editors might imagine. The Editors have therefore consciously avoided imposing an overly interpretive framework on the documents. Similarly, annotation does not include historiographical debate or secondary sources, unless they provide specific information that is not generally known.

For a complete statement of the John Dickinson Writings Project's editorial methodology, see *The Complete Writings and Selected Correspondence of John Dickinson*, 1:lvii–lxvi.

The sections here detail the devices used to clarify text and the editorial codes that are used for a variety of manuscript sources. The latter sections list the symbols for institutions holding original materials, abbreviations, and the short titles of books and other works that appear in Volume 2 of *The Complete Writings and Selected Correspondence of John Dickinson*.

Basic Editorial Devices

Word inserted by author:	{Government}
Word deleted by author:	Government
Word in a hand different from main author:	[JD:] <Government>
Editorial notes in brackets and italics:	[<i>illegible</i>]; [<i>see left margin:</i>]
Illegible word deleted by author:	[<i>illegible</i>]
Word added by editors, very certain:	[Government]
Very unclear word, guess by editors:	[Government?]

Methodology

Unclear word inserted
and deleted by author:

{{Government}}

Abbreviated word,
expanded by editors:

Gov.¹ *becomes* Gov[ernmen]t

When letters or words have been
cancelled by a new letter or word
written over the original, there is
no space between the cancellation
and the insertion:

g{G}overnment

Other Conditions

- The general physical appearance of the text has been reproduced, including blocks of text, columns, indentations, and blank spaces. Lines and other drawings on the page, such as hand-braces, insertion symbols, or boxes drawn around words or paragraphs, are reproduced as near to the original as is technologically possible. Where a feature is not reproduced visually, a descriptive editorial note is added.
- Marginalia and other inserted words and sentences are placed in the text either where JD indicated they belong or where the flow of the text dictates. Either way, if the text to be inserted appears far from its intended insertion point (e.g., in the margin, on another page, or on a separate scrap of paper), an editorial note states where it actually appears in the original.
- When edits to a document have been made in an unknown hand or hands, this fact is mentioned in the headnote.
- Editorial interpolations are styled to match the text in which they have been inserted; for instance, if an underlined abbreviation has been expanded, the interpolation is also underlined.
- Underlined text is retained as written. Where underlines exceed two, an endnote specifies how many times.
- Catchwords (the dangling word at the bottom of a page, repeated at the top of the next) are omitted in correspondence but retained in draft manuscripts where they aided editors in determining order of pages.
- Single hyphens replace double hyphens.

- A single em-dash is used for all dashes, regardless of length or number.
- Text written larger or darker for emphasis is rendered in **boldface** type.
- Original signatures are rendered in **boldface** type; copied or proxy signatures are in roman.
- Abbreviations are expanded except in common titles (e.g., “M^r,” “M^{rs},” “D^r,” “S^t,” “Esq^r”), suffixes (“J^r,” “S^r”), and numbers (e.g., “4th,” “2.^d”). In expansions, periods are removed, superscript text is lowered, and the missing letters are supplied in square brackets. In cases where there could be either a British or an American spelling (e.g., “fav[o]r” or “fav[ou]r”), the Editors followed the conventions of the author in that particular document. When there was no model, spelling follows British conventions before 1776 and American afterward, following the evolution of JD’s spelling habits.
- Contractions are retained as written, with or without an apostrophe; “ed” words without the “e” or an apostrophe are not changed.
- Archaic letters and abbreviations are modernized or expanded, and rendered in brackets: the long “s” (ſ) is made short; the per sign (℥) is expanded as “[per],” “[pro],” “[pre],” “[præ],” or “[pri],” as appropriate; the thorn is rendered as “[th]” (e.g., “[th]e,” “[th]at”), except in the case of “ye” for “you.”
- When a terminal dash is used instead of a period at the end of a sentence, a space is left between it and the following word.
- Authorial errors or slips of the pen are not corrected or marked with *[sic]*, except where they might be mistaken for an editorial error, such as a repeated word. Misspelled words that might be confusing are provided with an endnote.
- Capitalization is retained. Typical of the age, however, some letters, including “p” and “s,” had middling cases, neither capital nor lowercase. In those instances, which could be decided either way, capitalization follows the conventions of the author in the text or the general usage of the period.
- When multiple words or lines are illegible, they are noted as *[illegible words]*. If the words or lines are illegible because of deletion by the author, they will appear thusly: *[two illegible lines]*.
- Lacunæ are represented with a descriptive note: *[torn]*, *[ink spot]*.

ABBREVIATIONS AND SHORT TITLES

Editorial

AD	autograph document, not signed
ADS	autograph document, signed by the author
AL	autograph letter, not signed
ALS	autograph letter, signed by the author
DS	document, signed
Fr.	French, to indicate that the language used is French
Lat.	Latin, to indicate that the language used is Latin
Lc	letter copy
LFr.	Law French, to indicate that the language used is Law French
RG	record group
Rpt	reprint from an edited volume or other printed secondary source
Typed	a typescript of manuscript

Repositories and Collections

When a document resides in a named collection within a repository, its source is cited in annotation in the following form: XXX-YYY, where XXX is the repository or institution, and YYY is the named collection. Thus, for example, the Loudoun Mansion Papers at the Historical Society of Pennsylvania is cited PHI-Loudoun.

Allason	William Allason Records, Virginia State Library, Richmond
De-Ar	Delaware Department of State, Division of Historical and Cultural Affairs, Hall of Records, Dover, Del.
DeHi	Delaware Historical Society, Wilmington, Del.
Dreer	Ferdinand J. Dreer Autograph Collection, Historical Society of Pennsylvania
JDFP	John Dickinson Family Papers, Library Company of Philadelphia
JDPP	Leon deValinger, Jr.'s John Dickinson Papers Project, Historical Society of Pennsylvania
JHPP	John H. Powell Collection of John Dickinson Research, American Philosophical Society
Logan	Logan Family Papers, Historical Society of Pennsylvania
Loudoun	Loudoun Mansion Papers, Historical Society of Pennsylvania
MDL	Maria Dickinson Logan Collection, Historical Society of Pennsylvania

Abbreviations

Norris/Fairhill	Norris Family Papers, Historical Society of Pennsylvania
PCarLD	John Dickinson Papers, Dickinson College, Carlisle, Pa.
PHarH	Pennsylvania Historical and Museum Commission, Harrisburg
PHC	Haverford College, Haverford, Pa.
PHi	Historical Society of Pennsylvania, Philadelphia
PPAmP	American Philosophical Society, Philadelphia
PPL	Library Company of Philadelphia, Philadelphia
PSC-Hi	Friends Historical Library, Swarthmore College, Swarthmore, Pa.
Rodney	Richard S. Rodney Collection, Delaware Historical Society
RRL	R.R. Logan Collection of John Dickinson Papers, Historical Society of Pennsylvania
TMP	Thomas McKean Papers, Historical Society of Pennsylvania
Vi	Library of Virginia, Richmond
ViU	University of Virginia, Charlottesville

Published Sources in *Volume Two*

Am. Weekly Merc.

American Weekly Mercury. Philadelphia.

ANB

American National Biography. Edited by John A. Garraty, Mark C. Carnes, and Paul Betz. 24 vols. and 2 supps. New York: Oxford University Press, 1999–2005; rev. ed., <https://www.anb.org/>

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ARGII

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ARGIII (1763)

John Dickinson Writings and Correspondence

Anno Regni Georgii III. Regis, Magnæ Britanniaë, Franciaë & Hiberniaë, Tertio. Philadelphia: B. Franklin, 1763.

Bacon, *Abridgment*

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Bacon, *Cases*

Mathew Bacon. *A General Abridgment of Cases in Equity, Argued and Adjudged in the High Court of Chancery, &c.* 4th ed., 2 vols. London: H. Lintot, 1756.

Barnardiston

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Barnardiston, K.B.

Thomas Barnardiston. *Reports of Cases Determined in the Court of King's Bench.* 2 vols. London: H. Lintot, 1744.

Baron and Feme

Baron and Feme. A Treatise of the Common Law concerning Husbands and Wives. 2nd ed. London: E. Nutt and R. Gosling, 1719.

BLD

Black's Law Dictionary, <https://thelawdictionary.org/>

Brooke

Robert Brooke (Broke). *La Graunde Abridgement, Collecte & escrie per le Iudge Tresreuerend Syr Robert Brooke Chiualier, nadgairs chiefe Justice del common banke.* 2nd ed., 2 vols. in 1. London: R. Tottell, 1576.

Brownlow and Goldesborough

Richard Brownlow and John Goldesborough. *Reports, of Diverse Choice Cases in Law.* Vol. 1. London: T. Roycroft, 1651.

Richard Brownlow. *Reports: (A Second Part.) of Diverse Famous Cases in Law.* Vol. 2. London: T. Roycroft, 1651.

Bunbury

William Bunbury. *Reports of Cases in the Court of Exchequer, from the Beginning of the Reign of King George the First, until the Fourteenth Year of the Reign of King George the Second.* London: H. Lintot, 1755.

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Carkesse

Charles Carkesse. *The Act of Tonnage and Poundage, and Rates of Merchandize*. London: J. Baskett, 1731.

Carter

Samuel Carter. *Reports of Sevrall Special Cases Argued and Resolved in the Court of Common Pleas: in the XVI, XVII, XVIII, and XIXth Years of King Charles II*. London: W. Rawlins, S. Roycroft, and M. Flesher, 1688.

Carter, *Trespass*

Samuel Carter. *A Treatise Concerning Trespasses*. London: Printed by the assigns of R. and E. Atkins, 1705.

Carthew

Thomas Carthew. *Reports of Cases Adjudged in the Court of King's Bench, from the Third Year of King James the Second, to the Twelfth Year of King William the Third*. London: E. and R. Nutt, and R. Gosling, 1728.

Cary

George Cary (Carew). *Reports or Causes in Chancery*. London: E.G., 1650.

Chancery

Cases Argued and Decreed in the High Court of Chancery. 2 vols. London: Printed by the assigns of R. and E. Atkins, 1697–1701.

Chancery Rep.

Reports of Cases Taken and adjudged in the Court of Chancery, In the Reign of King Charles I. Charles II. and James II. 2nd ed., 3 vols. London: J. Nutt, 1715–16.

Clayton

John Clayton. *Reports and Pleas of Assises At Yorke*. London: J. Flesher, 1651.

CLE

William Blackstone. *Commentaries on the Laws of England*. 4 vols. Oxford: Clarendon Press, 1765–69.

Coke, *Institutes*

Edward Coke. *Institutes of the Laws of England*. 4 vols. London: A. Islip, M. Flesher, and R. Young, 1628–44.

Coke, *Reports*

John Dickinson Writings and Correspondence

Edward Coke. *The Reports of Sir Edward Coke Kt. In English, in thirteen Parts Compleat*. Rev. ed. 13 vols. London: E. and R. Nutt, and R. Gosling, 1738.

Collection of Charters

A Collection of Charters and Other Publick Acts Relating to the Province of Pennsylvania. Philadelphia: B. Franklin, 1740.

Comberbach

Roger Comberbach. *The Report of Several Cases Argued and adjudged in the Court of King's Bench at Westminster; From the First Year of King James the Second, to the tenth Year of King William the Third*. London: E. and R. Nutt, and R. Gosling, 1724.

Croke

George Croke. *The Reports of S^r George Croke K^t.: Late one of the Justices of the Court of Kings-Bench, And formerly one of the Justices of the Court of Common-Bench*. 3rd ed., 3 vols. London: W. Rawlins, S. Roycroft, and H. Sawbridge, 1683.

CRP

Colonial Records of Pennsylvania. 16 vols. Harrisburg and Philadelphia: T. Fenn et al., 1838–53.

Dallas

Alexander J. Dallas. *Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania, before and since the Revolution*. 4 vols. Philadelphia: T. Bradford et al., 1790–1807.

Dalton

Michael Dalton. *The Country Justice: Containing the Practice of the Justices of the Peace out of their Sessions*. London: W. Rawlins and S. Roycroft, 1705.

Dull

Jonathan R. Dull. *The French Navy and the Seven Years' War*. Lincoln: University of Nebraska Press, 2005.

Duncombe

Giles Duncombe. *Trials per Pais. Or, the Law of England Concerning Juries by Nisi Prius, &c.* 6th ed. London: E. and R. Nutt, and R. Gosling, 1725.

Dyer

Abbreviations

James Dyer. *Cy ensuont ascuns nouel cases, Collectes per le iades tresreuerend Iudge, Mounsieur Iasques Dyer, chiefe Iustice del common banke, Ore primierment publies & imprimies*. London: R. Tottell, 1585.

Finch, *Precedents*

Thomas Finch. *Precedents in Chancery: Being a Collection of Cases Argued and Adjudged in the High Court of Chancery; From the Year 1689 to 1722*. 2nd ed. London: H. Lintot, 1747.

FitzGibbon

John FitzGibbon. *The Reports of several Cases Argued and Adjudged in the Court of the King's Bench At Westminster*. London: E. and R. Nutt, and R. Gosling, 1732.

Fitzherbert

Anthony Fitzherbert. *La Graunde Abridgement*. London: R. Tottell, 1577.

Fitzherbert, *Natura*

Anthony Fitzherbert. *The New Natura Brevium of the Most Reverend Judge, Mr. Anthony Fitz-Herbert*. 6th ed. London: E. Nutt and R. Gosling, 1718.

Foster

Michael Foster. *A Report of Some Proceedings on the Commission of Oyer and Terminer and Goal Delivery for the Trial of the Rebels in the Year 1746 in the County of Surry, and of other Crown Cases*. Oxford: Clarendon Press, 1762.

Freeman

Richard Freeman. *Reports of Cases Argued and Adjudged in the Courts of King's Bench and Common Pleas, From 1670 to 1683*. Rev. ed. London: H. Lintot, 1742.

Freeman, *Equity*

Richard Freeman. *Reports of Cases in Law and Equity: From 1670 to 1706*. London: H. Lintot, 1742.

Gilbert

Jeffray Gilbert. *The Law of Evidence*. London: H. Lintot, 1756.

Gilbert, *Reports*

Jeffray Gilbert. *Reports of Cases in Equity, Argued and Decreed In the Courts of Chancery and Exchequer*. 2nd ed. London: H. Lintot, 1742.

Grotius, *Rights* (1715)

John Dickinson Writings and Correspondence

Hugo Grotius. *Of the Rights of War and Peace*. 3 vols. London: D. Brown, T. Ward, and W. Meares, 1715.

Hale, *Common*

Mathew Hale. *The History of the Common Law of England*. 2nd ed. London: J. Walthoe and J. Walthoe, Jr., 1716.

Hale, *Pleas*

Mathew Hale. *Historia Placitorum Coronæ. The History of the Pleas of the Crown*. 2 vols. London: E. and R. Nutt, and R. Gosling, 1736.

Hardwicke

Cases Argued and Adjudged, in the Court of the King's Bench, At Westminster, In the 7th, 8th, 9th, and 10th Years of the Reign of his Late Majesty, King George the Second during which time the late Lord Chief Justice Hardwicke Presided in that Court. London: W. Strahan and M. Woodfall, 1770.

Harrison

Joseph Harrison. *The Accomplish'd Practiser in the High Court of Chancery*. 3rd ed., 2 vols. London: H. Lintot, 1750.

Hawkins

William Hawkins. *A Treatise of The Pleas of the Crown: or, A System of the Principal Matters relating to that Subject, digested under their Proper Heads*. 3rd ed., 2 vols. London: E. and R. Nutt, and R. Gosling, 1739.

Hobart

Henry Hobart. *The Reports of That Reverend and Learned Judge, the Right Honourable S^r Henry Hobart Knight and Baronet, Lord Chief Justice of His Majesties Court of Common Pleas. And Chancellour to Both Their Highnesses, Henry and Charles Princes of Wales*. London: R. and W. Leybourn, 1658.

Hom. *Od.*

Homer. *Odyssey*.

Hor. *Carm.*

Horace. *Carmina*.

Hor. *Epist.*

Horace. *Epistles*.

Hutton

Richard Hutton. *The Reports of that Reverend and Learned Judge, Sir Richard Hutton Knight*. London: T.R., 1656.

Abbreviations

Instructor

Robert Gardiner. *Instructor Clericalis. Directing Clerks, in the Present Practice of the Courts of King's Bench and Common Pleas*. 7th ed. London: E. and R. Nutt, and R. Gosling, 1727.

Jenkins

David Jenkins. *Eight Centuries of Reports: or, Eight Hundred Cases solemnly adjudged in the Exchequer-Chamber*. 2nd ed. London: E. and R. Nutt, and R. Gosling, 1734.

Just. Code

Justinian Codex Constitutionum.

Just. Digest

Justinian Digesta.

Justice¹

Alexander Justice. *A General Treatise of the Dominion of the Sea. And a Compleat Body of the Sea-laws. Containing What Is most Valuable on that Subject in Antient and Modern Authors*. 3rd ed. London: D. Leach, 1724.

Keble

Joseph Keble. *Reports in the Court of Kings Bench at Westminster, from the XII to the XXX Year of the Reign of our Late Sovereign Lord King Charles II*. 3 vols. London: W. Rawlins, S. Roycroft, and M. Flesher, 1685.

Keilway

Robert Keilway. *Relationes quorundam Casuum Selectorum ex Libris Roberti Keilwey Ar'*. London: [A. Islip], 1602.

Kelyng

John Kelyng. *A Report of Divers Cases in Pleas of the Crown, Adjudged and Determined; In the Reign of the late King Charles II*. 2nd ed. London: E. and R. Nutt, and R. Gosling, 1739.

Leonard

William Leonard. *Reports and Cases of Law: Argued and adjudged in the Courts of Law, at Westminster. In the time of the late Queen Elizabeth*. 4 vols. London: T. Roycroft, 1658–75.

¹ JD regularly cited Justice as Molloy (“Moll.” or “Molloy”); the correct citation to Justice is inserted in the notes.

John Dickinson Writings and Correspondence

Levinz

Creswell Levinz. *The Reports of S^r Creswell Levinz, Knt. Late One of the Judges in the Court of Common Pleas At Westminster*. 2nd ed., 3 pts. Transl. William Salkeld. London: E. and R. Nutt, and R. Gosling, 1722.

LGD ([year])

Laws of the Government of New-Castle, Kent and Sussex, Upon Delaware. Philadelphia: B. Franklin and D. Hall, 1752; 2 vols. Wilmington, Del.: J. Adams, 1763.

Lilly

John Lilly. *The Practical Register: or, A General Abridgment of the Law*. 2nd ed., 2 vols. London: H. Lintot, 1745.

LLP

Lawmaking and Legislators in Pennsylvania: A Biographical Dictionary. Edited by Craig W. Horle et al. 3 vols. Philadelphia and Harrisburg: University of Pennsylvania Press and Commonwealth of Pennsylvania House of Representatives, 1991–2005.

Lucan, *Pharsalia*

Marcus Annaeus Lucanus. *Pharsalia*.

Lutwyche

Edward Lutwyche. *Un Livre des Entries: Contenant auxi un Report des Resolutions del Court sur Diverse Exceptions Prises as Pleadings, et Sur auters Matters en Ley*. 2 vols. London: R. and E. Atkins, 1704.

Mallory

John Mallory. *The Attorney's Pocket Companion; Or, a Guide to the Practisers of the Law*. 3rd ed., 2 vols. London: E. and R. Nutt, 1741.

March

Reports: or, New Cases; with Divers Resolutions and Judgements given upon solemn Arguments, and with great deliberation. Comp. John March. London: M.F., 1648.

Maxims

Richard Francis. *Maxims of Equity, Collected From, And proved by Cases, out of the Books of the best Authority, in the High Court of Chancery*. London: E. and R. Nutt, and R. Gosling, 1728.

Abbreviations

Modern²

Modern Reports, or Select Cases Adjudged in the Courts of Kings Bench, Chancery, Common-Pleas, and Exchequer, since the Restauration of His Majesty King Charles II. Vol. 1. London: Printed for T. Basset, J. Wright, R. Chiswell, and S. Heyrick, 1682.

The Second Part of Modern Reports, being a Collection Of Several Special Cases Most of them Adjudged in the Court of Common Pleas, In the 26, 27, 28, 29, & 30th Years of the Reign of King Charles II. Vol. 2. London: Printed by the assigns of R. and E. Atkins, 1698.

The Third Part of Modern Reports, being a Collection Of Several Special Cases in the Court of King's-Bench; In the last Years of the Reign of King Charles II. In the Reign of King James II. And in the two first Years of his present Majesty. Vol. 3. London: Printed by the assigns of R. and E. Atkins, 1700.

The Fourth and Last Part of Modern Reports, being a Collection Of Several Special Cases Argued and Adjudged in the Court of King & Queen's Bench: In the 2d, 3d, 4th, 5th, and 6th Years of the Reigns of King William and Queen Mary, and 7th Year of King William. Vol. 4. London: Printed by the assigns of R. and E. Atkins, 1703.

The Fifth and Last Part of Modern Reports: being a Continuation Of Several Special Cases Argued and Adjudged in the Court of Queen's Bench, At Westminster, In the 6th, 7th, 8th, 9th, 10th, and 11th Years of the Reign of the late King William. Vol. 5. London: J. Nutt, 1711.

Modern Cases, Argued and Adjudged in the Court of Queen's-Bench at Westminster, in The Second and Third Years of Queen Anne, in the Time when Sir John Holt sate Chief Justice there. Vol. 6. London: J. Nutt, 1713.

Modern Cases Argued and Adjudged in the Court of King's-Bench at Westminster, In the Reign of Her late Majesty Q. Anne, in the Time when Sir John Holt sat Chief-Justice there. Vol. 7. London: J. Nutt, 1716.

Modern Cases in Law and Equity. In Two Parts. Containing I. Reports of Special Cases Argued and Adjudged in the Court of King's Bench, In the VII, VIII, IX, X, XI and XII Years of King George I. II. Cases Argued and Decreed in the High Court of Chancery, in the VIII, IX, X and XI Years of King George I. To which are added, Some Special Cases on

² For these related works with the same abbreviation, readers are advised to note the volume number in the citation to identify the full title here.

John Dickinson Writings and Correspondence

Appeals. Vols. 8–9 (2 vols. in 1). London: E. and R. Nutt, and R. Gosling, 1730.

Cases in Law and Equity, Chiefly during the Time the late Earl of Macclesfield Presided in the Courts of King's-Bench and Chancery. Vol. 10. London: E. and R. Nutt, and R. Gosling, 1736.

A Report of Cases Argued, Debated, and Adjudged in B.R. in the Time of the late Queen Anne. Vol. 11. London: E. and R. Nutt, and R. Gosling, 1737.

Cases Adjudged in the Court of King's Bench, From the second Year of King William III To the End of his Reign. Vol. 12. London: E. and R. Nutt, and R. Gosling, 1738.

Molloy

Charles Molloy. *De Jure Maritimo et Navali: or, a Treatise of Affaires Maritime And of Commerce*. London: Printed for J. Bellinger, G. Dawes, and R. Boulter, 1676.

Montesquieu

Charles Louis de Secondat, Baron de la Brède et de Montesquieu. *The Spirit of Laws*. Transl. Thomas Nugent. 2nd ed., 2 vols. London: Printed for J. Nourse and P. Vaillant, 1752.

Moore

Francis Moore. *Cases Collect & Report per Sir Fra. Moore Chevalier, Serjeant del Ley*. 2nd ed. London: Printed for G. Pawlet, 1688.

MVHR

Mississippi Valley Historical Review.

Nelson

William Nelson. *An Abridgment of the Common Law: Being a Collection of the Principal Cases Argued and Adjudged in the several Courts of Westminster-Hall*. 3 vols. London: E. and R. Nutt, and R. Gosling, 1725–26.

Noy

William Noy. *Reports and Cases, Taken In the time of Queen Elizabeth, King James, and King Charles*. London: F.L., 1656.

OED

Oxford English Dictionary. Edited by J.A. Simpson, E.S.C. Weiner, et al. 2nd ed., 20 vols. Oxford: Oxford University Press, 1989; rev. ed., <https://www.oed.com/>

Abbreviations

Ovid *Met.*

Ovid. *Metamorphoses*.

Owen

Thomas Owen. *The Reports Of that late Reverend and Learned Judge, Thomas Owen Esquire; One of the Justices of the Common Pleas*. London: T.R., 1656.

PA

Pennsylvania Archives. 9 ser. Edited by Samuel Hazard et al. 121 vols. in 122. Philadelphia and Harrisburg: Joseph Severns & Co. et al., 1852–1935.

PA Law

A Collection of all the Laws Of the Province of Pennsylvania: Now in Force (bound with other items). Philadelphia: B. Franklin, 1742.

Parl. Hist.

The Parliamentary or Constitutional History of England. 24 vols. London: T. Osborne and W. Sandby, 1751–61.

PBF

The Papers of Benjamin Franklin. Edited by Leonard W. Labaree et al. 43 vols. to date. New Haven, Conn.: Yale University Press, 1959– .

Peere Williams

William Peere Williams. *Reports of Cases Argued and Determined in the High Court of Chancery, and Of some special Cases Adjudged in the Court of King's Bench*. 3 vols. London: E. and R. Nutt, R. Gosling, and H. Lintot, 1740–49.

PG

Pennsylvania Gazette. Philadelphia.

PGW

The Papers of George Washington: Presidential Series. Edited by Dorothy Twohig et al. 21 vols. Charlottesville: University of Virginia Press, 1987–2020.

Pigott

Nathaniel Pigott. *A Treatise of Common Recoveries, their Nature and Use*. London: E. and R. Nutt, and R. Gosling, 1739.

PJ

Pennsylvania Journal. Philadelphia.

John Dickinson Writings and Correspondence

Plowden

Edmund Plowden. *The Commentaries, or Reports of Edmund Plowden, Of the Middle-Temple, Esq; An Apprentice of the Common Law*. London: C. Lintot and S. Richardson, 1761.

Plut. *Aem.*

Plutarch. *Life of Aemilius Paulus*.

PMHB

Pennsylvania Magazine of History and Biography.

Pope, *Odyssey*

The Odyssey of Homer. Transl. Alexander Pope. 5 vols. London: Printed for B. Lintot, 1725–26.

Postlethwayt, *System*

Malachy Postlethwayt. *Great-Britain's True System*. London: Printed for A. Miller, J. Whiston, B. White, and W. Sandby, 1757.

PTJ

The Papers of Thomas Jefferson. Edited by Julian P. Boyd et al. 44 vols. to date. Princeton, N.J.: Princeton University Press, 1950– .

PWJ

The Papers of Sir William Johnson. Edited by James Sullivan et al. 14 vols. Albany: The University of the State of New York, 1921–65.

Quintilian *Inst.*

Quintilian. *Institutio Oratoria*.

Raymond, *Cases*

Robert Raymond. *Reports of Cases Argued and Adjudged in the Courts of King's Bench and Common Pleas, In the Reigns of The late King William, Queen Anne, King George the First, and His present Majesty*. 2 vols. London: H. Lintot, 1743.

Raymond, *Special*

Thomas Raymond. *The Reports Of divers Special Cases Adjudged in the Courts of Kings Bench, Common Pleas & Exchequer, In the Reign of King Charles II*. London: Printed by the assigns of R. and E. Atkins, 1696.

Read, *Life and Corr.*

William Thompson Read. *Life and Correspondence of George Read*. Philadelphia: J.B. Lippincott & Co., 1870.

Abbreviations

Read's Weekly

Read's Weekly Journal, or, British-Gazetteer. London.

Rolle

Henry Rolle. *Les Reports de Henry Rolle Serjeant del' Ley, De divers cases En le Court del' Banke le Roy.* 2 vols. London: Printed for A. Roper et al., 1675–76.

Rolle, *Abridgment*

Henry Rolle. *Un Abridgment des plusieurs cases et resolutions del Common Ley.* 2 vols. in 1. London: A. Crooke et al., 1668.

SAL

The Statutes at Large, from Magna Charta, to the End of the Eleventh Parliament of Great Britain, Anno 1761. Edited by Danby Pickering. 46 vols. Cambridge: J. Bentham et al., 1762–1807.

Salkeld

William Salkeld. *Reports of Cases Adjudged in the Court of King's Bench; with Some Special Cases in the Courts of Chancery, Common Pleas and Exchequer, from the First Year of K. William and Q. Mary, to the Tenth Year of Queen Anne.* 2nd ed., vols. 1–2. London: E. and R. Nutt, and R. Gosling, 1721–22.

William Salkeld. *Reports of Cases Adjudged in the Court of King's Bench; Together with Several Special Cases adjudged in the Courts of Chancery, Common Pleas, and Exchequer; from the Revolution to the Tenth Year of Q. Anne.* Vol. 3. London: E. and R. Nutt, and R. Gosling, 1724.

SALP

The Statutes at Large of Pennsylvania in the Time of William Penn. Comp. Gail McKnight Beckman. Vol. 1. New York: Vantage Press, 1976.

The Statutes at Large of Pennsylvania. Comp. James T. Mitchell et al. Vols. 2–18. Harrisburg: State Printer, 1896–1915.

SALUS

The Public Statutes at Large of the United States of America. Edited by Richard Peters et al. 127 vols. to date. Boston and Washington, DC: Charles C. Little and James Brown et al., 1845– .

Saunders

Edmund Saunders. *Les Reports du Tres Erudite Edmund Saunders ... des Divers Pleadings et Cases En le Court del Bank le Roy en le*

John Dickinson Writings and Correspondence

Temps del Reign sa tres Excellent Majesty Le Roy Charles le II. 2nd ed., 2 vols. London: E. and R. Nutt, and R. Gosling, 1722.

Scharf

J. Thomas Scharf. *History of Delaware. 1609–1888.* 2 vols. Philadelphia: L.J. Richards & Co., 1888.

Sen., *Epist.*

Lucius Annaeus Seneca. *Epistles.*

Shower

Bartholomew Shower. *The Reports of Sir Bartholomew Shower, K^{nt}. Of Cases Adjudg'd in the Court of King's-Bench, In the Reign of His Late Majesty King William III.* 2 vols. London: Printed by the assigns of R. and E. Atkins et al., 1708–20.

Shower, Parliament

Bartholomew Shower. *Cases in Parliament Resolved and Adjudged upon Petitions, and Writs of Error.* London: A. and J. Churchill, 1698.

Siderfin

Thomas Siderfin. *Les Reports Des divers Special Cases Argue & adjudge en le Court del Bank Le Roy, Et Auxy en le Co. Ba. & l'Exchequer, En les premier dix ans apres le Restauration Del son Tres-Excellent Majesty Le Roy Charles le II.* 2nd ed. London: J. Nutt, 1714.

Skinner

Matthew and Robert Skinner. *Reports of Cases Adjudged in the Court of King's Bench.* London: E. and R. Nutt, and R. Gosling, 1728.

State Trials

Sollom Emlyn. *A Complete Collection of State-Trials, and Proceedings for High-Treason, and other Crimes and Misdemeanours; from the Reign of King Richard II. to The End of the Reign of King George I.* 2nd ed., vols. 1–6. London: J. Walthoe et al., 1730.

Sollom Emlyn. *A Collection of State-Trials, and Proceedings, upon High-Treason, and other Crimes and Misdemeanours, from The Reign of King Edward VI. to The Present Time.* Vols. 7–8. London: Printed for B. Motte et al., 1735.

Strange

John Strange. *Reports of Adjudged Cases In the Courts of Chancery, King's Bench, Common Pleas and Exchequer, from Trinity Term in the second Year of King George I. to Trinity Term in the twenty-first Year of King George II.* 2 vols. London: H. Lintot, 1755.

Abbreviations

Style

William Style. *Narrationes Modernæ, or Modern Reports Begun in the now Upper Bench Court at Westminster In the beginning of Hillary Term 21 Caroli, and continued to the end of Michaelmas Term 1655*. London: F.L., 1658.

Tac. *Ann.*

Tacitus. *Annales*.

Talbot

Alexander Forrester. *Cases in Equity During the Time of the late Lord Chancellor Talbot: with Tables of the Names of the Cases and Principal Matters*. 2nd ed. London: H. Lintot, 1753.

Vaughan

John Vaughan. *The Reports and Arguments of That Learned Judge Sir John Vaughan K^t. Late Chief Justice of His Majesties Court of Common Pleas*. London: T. Roycroft, 1677.

Ventris

Peyton Ventris. *The Reports of Sir Peyton Ventris K^t. Late one of the Justices of the Common Pleas*. 4th ed., 2 vols. London: E. and R. Nutt, and R. Gosling, 1726.

Verg. *Aen.*

Publius Vergilius Maro. *Aeneid*.

Vernon

Thomas Vernon. *Cases Argued and Adjudged in the High Court of Chancery*. 2 vols. London: E. and R. Nutt, and R. Gosling, 1726–28.

Viner

Charles Viner. *A General Abridgment of Law and Equity*. 23 vols. Aldershot, England: C. Viner, 1742–57.

Votes ([year])

Votes and Proceedings of the House of Representatives of the Province of Pennsylvania. Philadelphia: B. Franklin et al., 1730–75.

WMQ

William and Mary Quarterly.

Wood

Thomas Wood. *A New Institute of the Imperial or, Civil Law*. 3rd ed. London: W.B., 1721.

The
COMPLETE WRITINGS
and
SELECTED CORRESPONDENCE
of
JOHN DICKINSON

Volume Two • 1759–1763

1759

1

Notes for *James Gardner & Mary French Gardner v. Robert Bedwell*, February 1, 1759

In this trespass case, JD appears to have represented the defendant, Robert Bedwell, who was accused of cutting down and removing trees at least twelve inches in diameter from land belonging to the plaintiff and his wife. Trespass in English tort law concerned not only unlawful entry onto land but also the removal of goods from land. JD's notes on the deposition reveal a mix of local oral knowledge concerning land boundaries, as well as official deeds and surveys. The notes largely concern challenging the plaintiff's evidence against the standards established in past cases and legal treatises.

Gardner & Wife ³ v Robert Bedwell ⁴ —	}	{Move in Arrest of Jud[gm]t th[at] the Trees are not particularizd—L ^d . Raym. 1410 ¹ —Note Book title Trespass} ² Tresp[ass] for cutting Trees Quare Clausum fregit ⁵ {1 Feb[ruary] 1759}—calld Mill lane —part of a Tract calld Longreach ⁶ —& cutt[in]g 70 Timber Trees.
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W[illia]m Wallace sworn ⁻⁷	Poor Man I saw R[obert] B[edwell] & ano[the]r Man cutt[in]g Timber near M ^r . Armitage's Land ⁸ & cautiond him ag[ains]t encroach[in]g on this Land— Dont know whether the Place where R[obert] B[edwell] lives was work[in]g (but did not cut down) was on the Place where he now lives, or on Arm[i]t[age]'s R[obert] B[edwell] livd on the# {P}lace where he now lives (I believe) about 5 Years ago—before G[ardner] had the Jury there— to endeavour to turn him out—.
--	---

Take Exception to the
Cofur[t's] Opin[ion] &
order th[at] Evan Lewis
should be sworn to
[pro]ve the Build[in]g
the House

Have heard of a Place calld Longreach but
dont know any thing of the Bounds of it—
Understood one Boyles⁹ livd {on Holland
old fields} some where thereabouts under
G[ardner]— Bedwell lives on the Corner of

John Dickinson Writings and Correspondence

Take Exception to a
Witn[es]s being
qualified after the
Evid[ence] closd & the
Def[endan]t's Counsel
beginning to speak to
the Jury

an old Field—not Holland old fields—
Bedwell & Boyles might live on diff[eren]t
Tracts for any Thing I know—
==

- 7 March 1681/2 Survey to Tho[ma]s Henry & Rob[er]t
Bedwell¹⁰ & Adam Fisher¹¹ {for Longreach}
- 8 Feb[ruary] 1691 Deed from Adam Fisher to Gabriel Jones¹²
- 12 June 1699 Deed from {Ex[ecu]tors of} Henry Bedwell to
John Robinson¹³
- 8 Feb[ruary] 1698 Deed from Gabriel Jones to Isaac Freeland
- 13 Sept[embe]r 1698 Deed from Gabriel Jones to Isaac Freeland
- 9 May 1705 Deed from Isaac Freeland to Robert French¹⁴
- 23 Jan[uar]y 1712 Robert French's¹⁵ Will— “Devise¹⁶ to Mary
the P[lainti]ff of 137 [pur]chasd from Isaac
Freeland[”]

Evan Lewis— Never knew of Rob[er]t Bedwell's cutt[in]g any Trees or
ordering any to be cut¹⁷

Vincent Loockerman—R[obert] B[edwell] acknowl[edge]d that he
cutt the Trees in a Field—¹⁸ Dont know th[at] the Field
R[obert] B[edwell] ~~built~~ cleard [*page break*] is w[ith]in
the Land claimd by G[ardner] & his Wife
Objecti[on]— No [Pro]of of Timber Trees 12 Inches
through being cutt by R[obert] B[edwell]

Evan Lewis— The old Field cleard when We were on the Forcible
Ent[ry] is out of the present Survey
The {Inq[uisiti]on on the} Forc[ible] Ent[ry] was Seven
Years ago—

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==

- 1—The Nature of the Trees not set out— L^d. Raym. 1410— My Note Book Title Tresp[ass] {5 Co. 35. {Playter’s Case} 1 Vent. 53}¹⁹
- 2—No [Pro]of of the Field cleared being within the Lines of Longreach— {Fitz. 257. 57. 2 Co. 33. 3 Co. 10.²⁰ ~~Mod. Cas.~~ {9 Mod} 322. Sal. 643. Gilb. L. of E. 236. {240.} Roll. Ab. 677. 2 Sal. 452.}²¹
- 3—No [Pro]of of the Tresp[ass] in Mill lane— {Sal. 385. G. L. of E. tit. Tresp[ass] Vin. Ab. tit. Evid. pa. 68. 64}²²
- 4—No [Pro]of of Timber Trees being cutt {—Cro. El. 415. Boraston v. Hay. Dier 192. Lynsey v Dixon— Vin. tit: Evid. 64. 65. Cro. Ja. 647. Scavage v Parker. Co. Litt: 46. b. 5 Co. 1. a & b.}²³
- 5—Q[ua]re If Action will lye—there being no Division {made} between the Patentees who were Joints— {(Co. Litt. 180. b.)²⁴ it being shewn by the P[lainti]ffs themselves & [illegible] [Dem[andan]t] [illegible] 3 Leon. 83. 94. Rose’s Case— {Vin. tit. Evid. 148.}²⁵
- 6—No Entry by the P[lainti]ffs— found Noy 73— Cart. {58.} 66. Geary v. Bearcroft²⁶ Vin. tit. Tresp. {462.} 463. 464. 2 Mod. 7. 10 Co. 40. 6.²⁷ Bro. tit. Tresp. 365. Law of Tresp. 13. 15. Co Litt. 15–b 253—of Entry²⁸

Entry gated to be necessary in Willards
Trial & the cutt[ing] of Timber Trees
there [par]ticularly [pro]vd—
Vide the Case in Viner th[at] tho[ugh] the
P[lainti]ff need not have ment[i]oned a
Location—yet if he does, he must [Pro]ve it—

AD (PHi-Logan)

¹ 2 Raymond, *Cases* 1410–11, *Wiat v. Effington*, Mich. 12 Geo. 1, B.R. (1725): “In trespass for breaking the plaintiff’s house, and taking away *diversa bona et catalla* [Lat. diverse goods and chattel] of the plaintiff’s *ibidem inventa* [Lat. discovered in the same place], verdict was given for the plaintiff, and intire damages assessed; and upon Mr. *Ward*’s motion the judgement was arrested, for the uncertainty in the declaration, in

not specifying what the goods were, so that this recovery could not be pleaded in bar of another action brought for the same goods.”

² There are twenty-eight entries in one of JD’s undated legal notebooks under the title “Trespass.” Entry 19, “[trespass] Q[uaere] Claus[um] freg[it] & Nature of Trees omitted,” reads: “Tresp[ass] want sett[ing] out the Nature & Number of the trees ill. 5 Co. 35. 2 Raym. 1410” (PHi-Logan). See also n. 1, above, and n. 5, below.

³ James Gardner (c. 1700–1773), of Kent Co., Del., was a farmer. His wife, Mary French Gardner (d. *ante* 1773), was a daughter of Robert French, for whom see n. 15, below.

⁴ Probably Robert Bedwell (c. 1705–1765), son of Robert Bedwell (died c. 1715), or his nephew Robert Bedwell (c. 1735–1807), son of James Bedwell.

⁵ Lat. wherefore he broke the close. “In an action of trespass quare clausum fregit the object is to recover damages for the trespass, and mere possession will support the action” (*Judicial and Statutory Definitions of Words and Phrases*, 2nd ser., 4 vols., St. Paul, Minn.: West Publishing Co., 1914, 4:1000).

⁶ Longreach was a tract of 1,100 acres lying on Isaac Branch of Dover River in Murderkill Hundred, Kent Co.

⁷ Perhaps William Wallace (1711–1772), a Murderkill Hundred yeoman.

⁸ Probably James Armitage (c. 1688–1755), a New Castle Co., Del., justice of the peace and judge of the courts.

⁹ Possibly William Boyles (died c. 1755), a Kent Co. weaver who purchased land in the forests of Murderkill Hundred.

¹⁰ Thomas Bedwell (d. 1716), Robert Bedwell (died c. 1715), and Henry Bedwell (d. 1698) were the sons of Robert Bedwell (1636–1686), who immigrated to Old Rappahannock, Va., in 1661, and Ann Colly Bedwell (died c. 1675). The elder Bedwell later warranted 800 acres in what eventually became Kent Co. and in 1683 he represented the county in the Assembly. He was elected again in 1686, but he died before the session began. Thomas Bedwell represented Kent Co. in 1697. He also served in various other public offices, including justice of the peace, sheriff, judge, and tax collector.

¹¹ Adam Fisher (died c. 1725), a housewright, was Susanna Fisher Bedwell’s son from her first marriage.

¹² Gabriel Jones (d. 1709) of Kent Co. For this deed to 138 acres, see Delaware Land Records, Roll No. 776, De-Ar.

¹³ Henry Bedwell named his wife Sarah Jones Bedwell as his executrix, and she had subsequently married Joshua Clayton (b. 1677), a prominent Kent Co. landowner. Together, they appeared as executors on the deed. John Robbison (d. 1708) was a resident of Kent Co. For this deed to 100 acres, see Delaware Land Records, Roll No. 776, De-Ar.

¹⁴ Isaac Freeland was a Kent Co. planter. For this deed to two tracts containing 138 acres, see Delaware Land Records, Roll No. 776, De-Ar.

¹⁵ Robert French (d. 1713) was a Scottish merchant who immigrated to New Castle Co. by 1687, where he became a prominent landowner. He was elected to the Assembly on multiple occasions in the early 1700s and served in a variety of other civic positions, including register of wills and overseer of highways.

¹⁶ Devise: “The act of devising, apportioning, or assigning, by will; a testamentary disposition of real property; the clause in a will conveying this” (*OED*).

¹⁷ Most likely Evan Lewis (died c. 1786), of Murderkill Hundred.

¹⁸ Vincent Loockerman, Sr. (1722–1785), of Dover, Del., was a prominent Anglican merchant and landowner who represented Kent Co. in the legislature of the Lower Counties for thirteen terms between 1752 and 1775.

¹⁹ 5 Coke, *Reports* 34 b. – 35 a., *Playter v. Warne*, Mich. 25 & 26 Edw. 1, B.R. (1584): Playter brought an action of trespass against Warne, who was found guilty. That

judgment was arrested when it was later found that Playter's declaration was not specific enough in listing the goods taken, in this case fish: "[i]t was agreed by the whole Court, that the Omitting of the Nature and Number of the Fish, was a Matter of Substance, and not of Form."

1 Ventris 53, *Thomlison v. Hunter*, Hill. 21 & 22 Car. 2, B.R. (1670): "Trespass, *Quare clausum fregit & arbores succidit ad valentiam decem librarum* [Lat. Wherefore he broke the close and cut down trees valued at ten pounds]. To which the Defendant demurred generally. The Plaintiff prayed Judgement for Breaking of his Close; but as to the other, the Declaration was insufficient, because not expressed what kind of Trees."

²⁰ Here and below, many of JD's legal citations, which were composed using a different pen, run over the manuscript fold onto the next folio.

Fitzherbert 57, 257. It is unclear what JD is referring to on these pages.

2 Coke, *Reports* 32 b., 33 a., "Doddington's Case," Mich. 36 & 37 Edw. 1, C.B. (1594): "*William Hall* brought an Ejectment against *John Peart* and *James Peart*, on a Demise made by *William Doddington* of Lands in the Parish of *Dynder* in the County of *Somerset*.... And that the said *John Ayleworth* died, and that *Ashton Ayleworth* his Son and Heir demised the Tenements aforesaid to the Defendants for their Lives. And that the Queen that now is, 5 Jul. 30 of her Reign, granted *Edw. Borough* the Residue of the Tenements ... who by Deed enrolled sold them to the said *William Doddington*, who leased them to the Plaintiff ... upon whom the Defendants entred. And if their Entry was lawful or not was the Question." Judgment was given for the plaintiff.

3 Coke, *Reports* 9 b., 10 a., "Dowtie's Case," Trin. 26 Edw. 1 (1584): "In an Information upon an Intrusion in the Exchequer against *John Dowtie*, who intruded into five Messuages or Cottages in the Parish of St. *Sepulchres* in *London*.... [T]he said five Messuages or Cottages lay in the Parish of St. *Sepulch*. and that at the Time of the said Bargain and Sale they were in the Occupation of the said *William Gardiner*. And if upon the whole Matter the Queen granted by the said Letters Patents the Tenements aforesaid to the said *Farneham*, then they found the Defendant not guilty; and if the Queen did not grant the said 5 Messuages or Cottages by the said Letters Patents, then they found the Defendant guilty."

²¹ 8 *Modern* 322, *Sir John Walrond v. Jacob Senior Henricus Van Moses*, Mich. 11 Geo. 1, B.R. (1725): "[I]t appeared, that the defendant was tenant by the *curtesy* ['A tenure by which a husband, after his wife's death, holds certain kinds of property which she has inherited, the conditions varying with the nature of the property' (*OED*)] in *Ireland*, and had cut down trees there, and that the reversion belonged to the plaintiff; and upon a case made for the opinion of the court, it was resolved, that in all *local* actions, as in trespass *quare clausum fregit*; the plaintiff cannot prove a trespass any where else, but where it is laid in the declaration, nor lay it in any other place but where it was done; but that it was otherwise in *transitory actions*, as *trover*, &c. therefore the plaintiff might lay the conversion here, and prove it was done in *Ireland*."

2 Salkeld 643, *Anonymus*, Pasch. 8 Ann., B.R. (1709): "Trespass for taking his Cattle: The Defendant pleaded that he was possessed of a Close for a Term of Years, and the Cattle trespassed therein, &c. The Plaintiff demurred, and Judgment was given for the Defendant, tho' he shew'd no Title, but justified upon a bare Possession: And this Difference was taken by Holt C[hief] J[ustice] Where the Action is transitory, as Trespass for taking Goods, the Plaintiff is foreclosed to pretend a Right to the Place, nor can it be contested upon the Evidence, who had the Right; therefore Possession is Justification enough: But in Trespass *quare clausum fregit* it is otherwise, because there the Plaintiff claims the Close, and the Right may be contested."

Gilbert 236: "If a Man declare in Trespass, and assign the Trespass in an Acre of Land, thus butted and bounded, and give Evidence of a Trespass in half that Acre, it

is sufficient; for since a Man proves the Damage to be done within the Bounds alledged in the Declaration, he proves what is alledged; in as much as the Damages only are to be recovered on these Allegations, he has sufficiently proved that Damage, which ought to be redressed, for a Trespass in any part of the Acres, is a Trespass in the Acre, and so answers the Declaration.”

Gilbert 240: “In Trespass *Quare Clausum & Domum fregit & alia enormia ei intulit*, upon the Evidence it appeared that an Injury was offered to the Plaintiff’s Daughter, and it was allowed that any matter that arose *ex turpi causa* [Lat. from a dishonorable cause] might be given in Evidence upon the general Declaration of *alia enormia ei intulit* [Lat. other injuries to him], but it ought to have been expressly set forth in the Declaration, or else nothing could be given in Evidence thereunto relating.”

1 Rolle, *Abridgment* 677. JD is likely referencing the section “Of what estate by collateral effect shall be endowed.” Because JD’s case concerns land and its delimitation, it appears he is using dower cases by analogy to talk about what is included.

2 Salkeld 452, *Domina Regina v. The Inhabitants of Barking, Needham-Market, and Darnesden Hamlets*, Pasch. 5 Ann. B.R. (1706): “A *Certiorari* issued to remove all Orders concerning the Inhabitants of the Parish of *Barking, Needham-Market*, and *Darnesden Hamlets*; and the Orders mentioned *Barking and Needham*, and *Darnesden Hamlets*, without Market. Serjeant *Weld* argued that they must be taken to be the same.... If *Needham* and *Needham-Market* be the same Hamlet, so it should have been returned; but we cannot take Notice that there is no such Hamlet as *Needham-Market*. If Trespass *quare Clausum fregit* at *Needham* were brought, and the Plaintiff proved a Breking at *Needham-Market*, he must be nonsuit.”

²² 1 Salkeld 385, *Domina Regina v. Cranage*, Mich. 11 Ann. (1712): “INDICTMENT, that the Defendant with others at the Parish of St. *Giles in the Fields*, riotously assembled, & *quoddam cubiculum cujusdam Saræ S. in domo mansionali David James fregit & intravit* [Lat. he broke into and entered the chamber of a certain Sara S. in the house-mansion of David James], and thirty Yards of Stuff took and carried away. Upon Evidence, it appeared to be the Mansion-House of *David Jamson*, and not *James*; and the Chief Justice held, That this did not maintain the Indictment like 2 *Ro.* 677. Trespass for breaking his Close in *Calvering, in quodam loco vocat.* [Lat. he said it to be in a certain place].”

Gilbert 236–42, 253–55, discusses trespass. See also n. 5, above.

12 Viner 68: “44. Indictment for breaking the Chamber of Cujusdam Saræ S. in domo mansionali David James, &c. the Evidence was, that it was the House of Jamson, not James, and per Parker Ch[ief] J[ustice] it will not maintain the Indictment, like Röll. 667; Trespass for breaking Plaintiff’s Close in *Calvering in quodam loco vocat.*”

12 Viner 64: “15. A *Covenant* was, that *Lessee for Years, should not cut any Trees* so as to commit waste, and gave Bond for the Performance. In Debt upon the Bond, the Plaintiff assigned the Breach, in cutting twenty Oaks, by which they were wasted. The Defendant pleaded, that he did not cut the said twenty Oaks, nor any of them, modo & forma prout, &c. [Lat. in the manner and form just as (averred in the prior pleading)] The Plaintiff rejoined, that he cut twenty Oaks prout, &c. The Jury found that the Defendant cut ten, and Judgment was given for the Plaintiff.”

²³ 1 Croke 415–16, *Boraston v. Hay*, Trin. 36 Edw. 1, B.R. (1594): “Trespass. The Defendant pleaded that the Land was Copyhold Land, parcel of the Mannor of *Abbersley* in the County of *Worcester*; and that the Custome there is that if a Copyholder in Fee hath a Wife at the time of his death, and two sons or more, that the Wife shall have the Land during her life as a Frank bank [i.e., free bench]. And that if the eldest son dies, living the Wife, although he hath Issue, his Issue shall not have it, but the second son; and shews that *Robert Boraston* Grandfather to the

Plaintiff was a Copyholder of that Manor, and died before his Wife, having Issue the Plaintiff's Father, and one *John Boraston* his second son.... They [the justices] found the Defendant guilty, if otherwise, not guilty, &c. And so there is not any conclusion of the point in Issue; and of that opinion were all the Justices upon the view of the Record; and that for this Cause it was insufficient and a gross fault; whereupon a *venire facias de novo* [Lat. that you make to come anew, i.e., a new trial] was awarded."

Dyer 192, *Linsey v. Dixon*, Mich. 2 & 3 Edw. 1, C.B. (1560): "A woman in *ejectione firmæ* [Lat. a writ of ejectment] brought against her, pleaded the custom within a manor that the widow of every copyholder in fee simple [i.e., 'An estate in land, etc. belonging to the owner and his heirs for ever, without limitation to any particular class of heirs' (*OED*)], fee tail [i.e., 'An estate of inheritance entailed or limited to some particular class of heirs of the person to whom it is granted' (*OED*)], of for term of life, should have and enjoy the copyhold for the term of her life. And this custom was traversed, and in evidence at *nisi prius* in maintenance of the custom before pleaded, the woman claimed only a widow's estate: and upon this evidence it was demurred. And it was holden by the Court here in the bench that this evidence will not maintain the custom before alleged because it is a smaller estate than the other custom, s. for term of life; and every custom shall be taken strictly; wherefore &c.... And afterwards in the end of the Term judgment was given against the woman."

12 Viner 65: "20. An *Ejectione firmæ* and a Trial at Bar, The Plaintiff had declared a *Lease made to him by Baron and Feme*; And that he being out of Possession *they* had made a *Letter of Attorney* to enter, and to deliver that Lease, and that they had sealed, and delivered it. And now ruled that the Declaration is naught, because it is *not a Lease of the Wife, but of the Husband only*; And so it hath been adjudged in one Rich's Case. And the *Letter of Attorney of the Wife is void*, because it is only executory. And the Counsel of the Plaintiff confessed that it hath been adjudged accordingly."

2 Croke 647, *Scavage v. Parker*, Mich. 20 Jac. 1, B.R. (1622): "*Ejectione firmæ* of a Lease of *Lucy Lady Griffin*, 7. Jan. 19 Jac. by Indenture dated 6. Dec. 19 Jac. *Habendum à die Datus Indenturæ prædictæ* [Lat. to have on the day given in the afore-said indenture]. Upon *Not guilty* pleaded, and Evidence to the Jury, the Lease was shewn baring date 6. Dec. 19 Jac. and the *Habendum* [i.e., the 'to have' clause] was a *tempore confectionis Indenturæ* [Lat. at the time of the making of the indenture]. And because *à die Datus* excludes the day, so as it is not the same Lease whereof the Plaintiff declares, It was held that the Plaintiff had mistaken his Action. Wherefore the Plaintiff was Non-suited."

1 Coke, *Institutes* 46 b.: "If a *man* be possessed of a term of forty years in the right of his wife, and maketh a lease for twenty years, reserving a Rent, and die, the wife shall have the residue of the term, but the executors of the husband shall have the Rent, for it was not incident to the Reversion; for that the wife was not party to the lease."

5 Coke, *Reports* 1 a., 1 b., "Clayton's Case," Mich. 27 & 28 Edw. 1, B.R. (1585): "In *Ejectione firmæ* between *Clayton* and *Presenham* ... [a]nd in this Case three Points were resolved by *Wray* Chief Justice, Sir *Thomas Gawdy*, and the whole Court.... 2. That where the said Indent. was delivered at 4 of the Clock in the Aftern. of the said 20 of *June*, it was resolved that this Lease should end the 19th Day of *June* in the 3d Year for the Law in this Computation doth reject all Fractions and Divisions of a Day for the Incertainty, which is always the Mother of Confusion and Contention. 3. That in this Case the Day of the Delivery of the Lease should be taken *inclusive*, and the Day itself is Parcel of the Demise; so where the Demise is limited to begin from the Making; but if the Lease be to begin from the Day of the Making, or from the Day of the Date, there the Day itself of the Date is excluded, and so the Doubt in 12 *Eliz. Dyer* 286. well explain'd, and with this Resolution agrees 14 *Eliz. Dyer* 307."

²⁴ 1 Coke, *Institutes* 180 b.: “Also, if two or three, &c. disseise another of any lands or tenements to their own use, then the disseisors are Joyntenants. But if they disseise another to the use of one of them, then they are not Joyntenants, but he to whose use the disseisin is made, is sole Tenant, and the others have nothing in the Tenancy, but are called Coadjutors to the Disseisin, &c.”

²⁵ 3 Leonard 83, “Rosse’s Case,” Mich. 26 Edw. 1, B.R. (1598): “In *Trespass* brought by *Rosse*, for breaking of his Close, and beating of his Servant, and carrying away of his Goods: Upon Not guilty pleaded, the Jury found this special matter; *scil.* That Sir *Thomas Bromley*, Chancellor of *England*, was seised of the land where, &c. and leased the same to the Plaintiff and one *A.* which *A.* assigned his moiety [i.e., ‘A half, one of two equal parts’ (*OED*)] to *Cavendish*; by whose Commandment the Defendant entred. It was moved, That the Tenancy in Common betwixt the Plaintiff, and him in whose right the Defendant justified, could not be given in Evidence; and so it could not be found by Verdict, but it ought to have been pleaded at the beginning. But the whole Court were clear of another Opinion; and that the same might be given in Evidence well enough. It was further moved against the Verdict, That the same did not extend to all the points in the Declaration but only to the breaking of the Close, without enquiry of the battery, &c. And for that cause, it was clearly holden by the Court, That the Verdict was void, And a *Venire facias de novo* was awarded.”

3 Leonard 94–95 repeats the report of “Rosse’s Case” from p. 83.

12 Viner 148: “In *Trespass* for *breaking his Close and beating his Servant, and carrying away his Goods*. Upon Not Guilty pleaded, the Jury found this Special Matter; *Scil.* That Sir T.B. was seised of the Land where &c. and leased the same to the Plaintiff and one *A.* which *A.* assigned his Moiety to *C* by whose Commandment the Defendant entred. It was moved that the *Tenancy in common betwixt the Plaintiff and him*, in whose Right the Defendant justified, could not be given in Evidence; and so it could not be found by Verdict, but ought to have been pleaded at the Beginning. But the whole Court was clear of another Opinion, and that the same might be given in Evidence well enough.”

²⁶ Noy 73, *Greene v. Wallwin, or Wiseman* (n.d.): “In an *ejectione firm.* The Plaintiff counts that *A.* was seis’d &c. And of that Enfeoffed *K.* to the use of the Plaintiff, and that he was seis’d by 27 H. 8. *devisibus* [Lat. of devises], &c. until the Defendants Lessors entred, and does not say, (and him disseis’d) for the truth was, that *cestuy que use* [LFr. He for whose use and benefit lands or tenements are held by another (*BLD*)], had not actually entred in the land. And if upon such a seisin by 27 H. 8. he may maintain an *ejectione firm.* was the question. And the Court seem’d that he could not, for they advis’d the Defendant to demurr; for actual possession is not in *cestuy que use* by the Statute. For he may disagree to it. And by *Walmesly* and *Glanvill.* That he may have an Aff. but not a trespassse without actual possession.”

Carter 58, *Geary v. Bearcroft*, Pasch. 18 Car. 2, C.B. (1666): “To make an Occupant, he must have an actual possession, and not a possession by inference, discourse, or argument in Law.”

Carter 66, *Geary v. Bearcroft*, Pasch. 18 Car. 2, C.B. (1666): “And now to the pinch of the Case ... I agree, it is not every actual possession that will serve the turn. If it be such an actual possession as without any further entry, I can maintain a trespass, and other actions against a stranger, it sufficeth. There is a possession in Law, and a possession in *Fait*; true, if a man make a lease for years, the possession of the Lessee for years is the possession of the Reversioner, that is one mans possession applicable to another; but that is not our Case. It is not every actual possession; nay there is an actual possession in *Fait*. If a man bargains and sells lands, presently, the Bargainee hath an actual possession, he may surrender, assign, attorn and release; yet he cannot upon this possession bring a Trespass, and so he hath no actual possession;

but the actual possession which gives him the power to being an Action for the profits, I know no greater possession though had his foot still upon the land.”

²⁷ 20 Viner 462–64. These pages contain three topics within the larger entry on Trespass: “Against whom. Disseisor or his Feoffee &c. *Persons in by Title*”; “Trespass. What shall be *sufficient Possession* to maintain the Action. [*Of Land.*]”; “Trespass by *Relation*. What shall be *sufficient Possession* to have the Action by Relation [*and After Restitution for Trespass done Mesne.*]”

2 *Modern* 7, *Anonymus*, Hill. 26 & 27 Car. 2, C.B. (1675): “A Man devises Land to A. his Heir at Law, and devises other Lands to B. in Fee, and saith, *If A. molest B. by Suit or otherwise he shall lose what is devised to him, and it shall go to B.* The Devisor dies, A. enters into the Lands devised to B. and claims it, the Court were of Opinion that this Entry and Claim is a sufficient breach to entitle B. to the Land of A.”

10 Coke, *Reports* 35 b., 40 b., “Mary Portington’s Case,” Trin. 11 Jac. 1 (1613): “*Mary Portington* brought an Action of Trespass against *Robert Rogers* and *Tho. Barley*, *quare Clausum & domum fregit apud Thorp Salvyn* in the County of York.... For such is the Nature of a Limitation, to determine the Estate without Entry, and then the Freehold in Law was vested in the Commonalty of *Lang-stone*, for a Stranger shall take Advantage of a Limitation, and by Consequence it was not possible that the Pl[aintiff] who had lost his Estate by Force of a Limitation, should recover the Assise.”

²⁸ 2 *Brooke* 277 a. – 292 a. discusses trespass.

Carter, *Trespass* 13: “*What shall be sufficient Possession or Property to maintain an Action of Trespass, and what not ...* Where the Law casts the Property of Possession upon any, before Seizure, he shall have Trespass; as, If any take the Goods of the Testator before the Executor hath seized them, he shall have Trespass of Replevin before Probate, for the Property and Possession was in him before the Seizure.”

Carter, *Trespass* 15: “*Where an Action of Trespass lies not without Entry....* If a Man bargains and sells Lands, he cannot bring this Action before actual Entry. *Carter’s Rep.* 66, *Geary* and *Barcroft.*”

1 Coke, *Institutes* 15 b.: “And some do take a diversity when an entry shall vest, or devest an Estate, that there must be several entries into the several parcels, but where the possession is in no man, but the freehold in law is in the heir that entreteth, there the general Entry into one part reduceth all into his actual possession.”

2

Examinations for *Paxton v. Van Dyke*, [February 19, 1759]

This document, as well as docs. 2:3–6 and 2:10, all below, relate to a case heard in Chancery Court in New Castle County, Del. In 1718, William Paxton was in low circumstances and with a young family to provide for. He accordingly borrowed a small sum from Francis Land and transferred his real estate to Land in consideration for the loan. (The document making the transfer apparently was not identified as a mortgage but rather as an indenture, deed, or similar document that appeared to convey the real estate absolutely.) Paxton died in 1719 without having repaid the loan. Within ten years of his death, his children moved to Bucks County, Pa. The real estate was eventually trans-

ferred to Henry Van Dyke. In 1759, the children, whom JD represented, sought to recover the property by redeeming what they claimed was a mortgage on the real estate.

Van Dyke likely argued in response, first, that the document transferring the real estate from Paxton to Land was not a mortgage but a deed; second, that Van Dyke had purchased the property from Land in good faith without notice of the document and therefore he should not be bound by it; and third, that redemption of the mortgage was not an appropriate remedy because more than forty years had passed since it was given. JD's counterarguments emphasized that the document transferring the real estate from Paxton to Land was a mortgage, that there was no case law supporting Van Dyke's good faith purchaser argument, and that in a court of equity a lengthy delay should not bar redemption where the facts suggested that it was equitable to allow it.

{In margin.} In this Case the Master of the Rolls¹ said, he rememberd a Case about twenty Years ago, where a Redemption was decreed on a Mortgage made in 1642, and where there was
N[ota] neither Infancy nor ouster lemere;² but only the
B[ene] Mortgagee having brought a Bill to foreclose, it was an Admission that he considered it as a Mortgage, and so the Mortgagor was let in to redeem. Ibid. 10.³

Examind JD.

“But where a Defendant pleaded himself a purchaser for valuable Consider[ations] and denied by way of Answer, that he had Notice of the Plaintiff's Title at the time of his purchase or Contract, and the Plea was overruled; for an evasive Denial is not sufficient; and here the word **Purchase** might be understood—when the Contract for the purchase was made; and it might be he had no Notice then, and might have Notice after, before or at sealing the Conveyance. 1 Ab. Ca. in Eq. 334. Mich. 15 Car. 2. between Moor and Mayhow.⁴

NB. This agrees with Jones & Stanley's Case pa. 4.⁵

Examind JD

A. makes a Conveyance to B. with power of Revocation by Will, and limits other uses; if A. dispose to a purchaser by the Will, another Purchaser subsequent is supposd to have Notice of the Will as well as of the power to revoke; and this is in Law Notice; and so it is in all Cases, where the purchaser cannot make out a title, but by a Deed, which leads him to another Fact, the Purchaser shall not be a Purchaser without Notice of that fact, but shall be presumd cognizant

thereof; for it is crassa Negligentia,⁶ that he sought not after it. Mich. 30 Car. 2. between Moor and Bennett. 2 Chanc. Ca. 246—1 Vern. [149]. 319. S.P. 2 Vern. 662 1 Ab. Ca. in Eq. 331.⁷

Examind **JD.**

Once a M[ortgage] always a M[ortgage] 1 Vern. 9. 32. 33. 191.⁸

==

Where a M[ort]g[ag]or agrees th[at] M[ort]g[ag]or shall enter & hold till satisfied—Length of time no Obj[ecti]on to Red[empti]on. 2 Vern. 418—⁹ All th[ing]s to be presumd ag[ain]s[t] those who suppress Truth— As here V[an]Dyke does his Deeds

This a usual Clause in our M[ort]gages. Case of the Jewel—¹⁰ [*page break*]

J.S. in 1679, mortgaged Lands to A. for a small sum of money, by an absolute Conveyance and Defeazance,¹¹ but the Redemption was expressed to be made with J.S.'s own money, and in his Life-time. Soon after J.S.'s necessities forced him to go abroad where he died about twenty seven years since, and his heirs knew nothing of the mortgage. In 1702 A. devised that if the mortgage should be redeemed, the money should go so & so. About sixteen Years after the Will, a Bill was filed for Redemption, to which was objected the **great length of time**, and that by the settled Rules of the Court, a Mortgage shall not be redeemed after twenty Years. But his Honour held, that decreeing a Redemption would be no wrong or hardship to the party, for he will have greater Interest than the Law now allows; and that the not decreeing a Redemption, would be establishing a very great Imposition; and tho[ugh] absolute Conveyances and Defeazances were formerly much usd in Mortgages, yet the same is left off, as dangerous by lossing the Defeazance, which is avoided by being in the same deed; that the words in the Defeazance, however fettered, signify nothing where the money is to be repaid; for the Borrower, being necessitated, and so under the Lender's power, the Law makes a benign Construction in his favour; but th[at] was a fraud in its creation, and in such a case is redeemab[le] after any length of time; for the words "to be paid with his own money," were thrown in to no other purpose but to make J.S. imagine it could not be done otherwise; whereas any other person's money was of equal Value. But if rightly considered [*in left margin:*] {V[ide] old Land's Will.}¹² distinct from the fraud, there is sufficient for Redemption by the Declaration in the Will, where he calls it a Mortgage; and as J.S. by those fettering Clauses would have a Right to

redeem so ~~would~~{will} his heir, who would be equally deceived by them; but here it appears that the heir knew nothing of this deed[,] which is still stronger; and had he known it, it would have deceived him, &{and} led him into an Imagination that he could not redeem. And Lord Commissioner Gilbert¹³ was of the same opinion, and thought this Case out of the general Rule of Dereliction, which even supposes previous Knowledge of the Right, it being absurd to say a Man relinquishes a Right which he knows not of, nor can it be supposed a Dereliction or a Right neglected or disregarded, by reason of the great Over-Value. And a Redemption was decreed.

East. 1725. Ord and Smith, Select Cases in Chan. 9.¹⁴

Examind JD

ADS (PHi-Logan)

¹ Master of the Rolls: “A senior judge who presides over the Court of Appeal in England and Wales” (*OED*).

² Or *oultre-le-mere*: “The essoin or excuse of being beyond the sea” (*OED*).

³ This quotation, including the citation, comes from the margin notes in 2 Bacon, *Cases* 600.

⁴ 1 Bacon, *Cases* 334: “5. But where a Defendant pleaded himself Purchaser for valuable Consideration, and denied by way of Answer, that he had Notice of the Plaintiff’s Title at the Time of his Purchase or Contract, and the Plea was over-ruled; for an evasive Denial is not sufficient; and here the Word *Purchase* might be understood, when the Contract for the Purchase was made; and it might be he had no Notice then, and might have Notice after, before or at Sealing the Conveyance.” See also n. 15, below.

⁵ On p. 4 of JD’s second set of notes (doc. 2:5, below), he relies on 2 Bacon, *Cases* 685, for a report on *Jones v. Stanley*, Mich. 5 Geo. 2, Scac. (1731). He could also be referring to the report of the Court of Exchequer Chamber that Bacon cites. A report of the case also appears in 2 Barnadiston, K.B. 64: “On Demurrer to a Plea of Purchase without Notice, Mr. *Bootle* objected in the first Place, that the Plea was informal for not concluding with an Averment; and cited the Case of [*blank*] in this Court, where a plea was held to be bad upon this very Exception about three Years ago; and Mr. *Bunbury* said, that he remembered that case, and it was so. He said, that he apprehended the Plea was bad in Substance likewise, for its being only alledged in the Plea, that he had no Notice at the Time of executing the Purchase Deeds; whereas, if he had Notice at any Time before the Payment of the Purchase Money, such Notice would be sufficient. And in the last Place, he submitted it, that the Defendant had waiv’d his Plea, by answering over to the Notice, and denying it in his Answer. To the first of these Objections the Chief Baron observed, that such Defect in Form was helped by the Statute for the Amendment of the Law, upon a general Demurrer; and therefore he thought it clear, this must be equally helped in a Court of Equity. To the second he said, it was certainly true, that if the Defendant had Notice before the Payment of his Purchase Money, he should not have the Benefit of this Plea; but yet he thought, there was enough set out in the Plea to have put the Plaintiff upon alledging the other fact in his Replication. And as to the last, he took it, that in Case of a Plea of Purchase *bona fide*, the Defendant constantly denies Fraud in his Answer; for which Reason he thought, that the denying Notice in the Defendant’s Answer, in

the present Case, could by no Means be said to be a Waiver of the Plea of Purchase without Notice; accordingly the Demurrer was over-ruled.”

⁶ Lat. gross negligence.

⁷ This section, including the citations, is quoted from 1 Bacon, *Cases* 331.

⁸ 1 Vernon 9, *Prodgers v. Phrazier*, Mich. 33 Car. 2, C.C. (1681). The case concerned the custody of “one *Bridgett Dennis*, an Ideot, &c.” The question before the Court was “*whether the Custody of an Ideot can by Law be granted to a Man, his Executors, Administrators, and Assigns.*”

1 Vernon 32. It is unclear to what JD is referring on this page, which does not report on any cases that deal with mortgages.

1 Vernon 33, *Howard v. Harris*, Hill., C.C. (1681): “*Howard* mortgages Land, and the Proviso for Redemption was thus: Provided that I myself or the Heirs Males of my Body may redeem. The Question was, Whether his Assignee should redeem it? And it was decreed, he should; for, if once a Mortgage always a Mortgage.”

1 Vernon 191, *Howard v. Harris*, Mich., C.C. (1683): “That Restrictions of Redemption in Mortgages have always discountenanced in this Court; and it would be a thing of mischievous Consequence, should they prevail; for then it would become a common Practice, and a Trade amongst the *Scriveners*, so to fetter the Mortgagors, as to make it impracticable for to them redeem according to the Precise Letter of the Agreement.”

⁹ 2 Vernon 418, *St. John v. Turner*, Hill., C.C. (1700): “*A.* mortgages in 1639, and in 1663, his Heir brings a Bill to redeem; he dying the Suit is revived by his Co-heirs, who obtain a Decree in 1672, but do not prosecute it, and *B.* having purchased the Equity of Redemption of them, he now brings a Bill to have the Benefit of the former Decrees. Bill dismissed by Reason of the Difficulty of the Account and Length of Time” (margin note).

¹⁰ 1 Strange 505, *Armory v. Delamirie*, Hill. 8 Geo. 1, B.R. (1722). See doc. 2:6, n. 3, below.

¹¹ Defeasance: “[r]elease or exemption from something owed or due, such as a debt or obligation; discharge from a debt or obligation; acquittance” (*OED*).

¹² Francis Land (d. 1736), a yeoman of Christiana Creek, New Castle Co., Del., owned considerable property in the county as well as near Elk River, Md. His will, dated July 23, 1735, and probated Dec. 8, 1736, is in New Castle Co., Register of Wills, De-Ar.

¹³ Sir Jeffray Gilbert (1674–1726) was a lawyer and judge. In 1725 he was appointed chief baron of the English exchequer and to the commission of the English Great Seal.

¹⁴ JD copied this section from 2 Bacon, *Cases* 600.

3

Set One of Notes for *Paxton v. Van Dyke*, [February 1759]

	{Numberless Author[itie]s}
	Forf[eitures] odious in Eq[uity] Where
	Compensation can be made 2 Vent. 352. 1 Mod.
	300. Sal. 156.} ³
	Red[em]p[tion] favoured V[ide] 2. Ab. Ca. in Eq.
	594 ⁴ very strong.}
Paxton ¹ & Al[ia]	} 1. Point. That We are the [pro][per] [Per]sons to
v	redeem.
Vandyke— ²	}

Injustice of giving a feesimple for a Trifle.

2. Point. That it is not too late to redeem. We Infants & Feme Cov[er]ts.⁵

3. Point. No Instance of a Man's plead[ing] [pur]chase w[ith]out Notice. {under a Mortg[ag]ee}

4. Point. That here was Notice of our Right.

Intent of the [Par]ties ought to be observd.

No Clause or Agreem[en]t cant prevent Redemption. 1 Vern. 33.⁶

Once a Mortg[age] always a Mortg[age]. 1 Vern. 33. 191:2.⁷

{ V[ide] 2 Ch. Rep. 44. &c⁸ a strong Case.

Mortg[age] in 1642 redeemd in 1700—the greatest part of the time being answerd by Infancy or Coverture.⁹ 2 Vern. 377. Vide 2 Vent. 340.¹⁰

1 Vern. 418¹¹ excessively Strong.

{ The Case in Vern. 418. answerd—because it appears by Repl[icati]on &c th[at] the Mortg[ag]ee enterd on the P[lainti]ffs being Inf[an]ts 1718—& was only 19 Years in poss[essi]on at the time of E[jectmen]t brought—& even filing a Latitat¹² will prevent the Statute of Limitations. }

Vide 2 Ab. Ca. in Eq. 594. & Vin. Ab. tit. Mortg[age] U. ca. 9.¹³ No Redemption after Forty years poss[essi]on—but on Acc[oun]t for turn[ing] Int[erest] into Principal.

Profits set ag[ains]t Int[erest] on an old Mortg[age] 2. Ab. Ca. in Eq. 618.¹⁴ [page break]

Pleas of [pur]chase not Shewing the [par][ticu]lar Consid[erati]on ill. 2 Ab. Ca. in Eq. 682. {Cont. Ch. Ca. 34.}¹⁵

2 Freem. Rep. 43.¹⁶

== There must be an Actual Contr[act] & Consid[erati]on paid. {Repl[icati]on to a Plea allows the Goodness of it but it must be [pro]vd.}

2 Ab. Ca. in Eq. 678. Harr. 380. 2 Vent. 361.¹⁷

==

Departure in alledging the [pur]chase first from Ex[ecut]ors- & then from Testor. 2. Lutw. 1424. 1 Harr. 409.¹⁸

==

If after the Ex[ecuti]on of

[rotated at bottom:]

Paxton v Vandyke Gave Notice to M^r. Moland & Chew on Jan[ua]ry of ~~executing~~ tak[ing] Exam[inati]ons Mond[ay] 19th Feb[rua]ry before M^r. Till at 10 ante{M[eridian]} & gave that or the following day to them as convenient for them.¹⁹

AD (PHi-Logan)

¹ William Paxton (Paxson; 1675–1719).

² Henry Van Dyke (Vandyke, Vandike; 1698–1762), a yeoman of St. Georges Hundred, New Castle Co., Del.

³ 2 Ventris 352, *Cage v. Russel*, Pasch. 33 Car. 2, C.C. (1681): “The Lord Chancellor decreed the Payment of the 500 l. and said, that it was the standing Rule of the Court, That a Forfeiture should not bind where a Thing may be done afterwards, or any Compensation made for it.”

1 *Modern* 300, *Fry v. Porter*, Pasch., 22 Car. 2, B.R. (1670): “That there is no Relief in Equity against the Forfeiture of Land limited over by Devise in Marrying, without consent, &c. Many particulars concerning Equity.”

1 Salkeld 156, *Grimston v. Lord Bruce & Ux.*, C.C. (1707): “H. Devised his Land to J.S. and his Heirs, on Condition to pay 20000 l. to the Heir at Law, viz. 1000 l. per Annum, for the first fifteen Years, and 2000 l. per Annum after that, till the whole should be paid; the heir entered for non-payment of one of the 1000 l. per Annum, and J.S. brought his Bill; and it was objected, That the Condition restores the Heir, and that Chancery ought not to aid in Disherison of him: But it was resolved by *Cowper*, Lord Chancellor, 1st, That the Entry of the Heir in this case, was only to inforce the Payment of his Principal; as where a Mortgage enters; and that the Court can give him Interest for the same from the Time it became payable, and that where-ever the Court can give Satisfaction of Compensation for a Breach of Condition, they can relieve.”

⁴ 2 Bacon, *Cases* 594: “1. A Mortgagee in Fee lends Money to the Mortgagor upon Bond, and the Mortgagor dies, and his Heir sells the Equity of Redemption. And per Lord Chancellor, the Vendee of the Heir of the Mortgagor shall redeem the land, without paying the Money lent on the Bond.”

⁵ Feme covert: “A married woman, considered as under the authority and protection of her husband, and (formerly, in English common law and United States law) as having no separate legal identity or rights to her own property” (*OED*).

⁶ 1 Vernon 33, *Howard v. Harris*, Hill., C.C. (1681): “In this Case Part of the Mortgaged Estate happened to be in Mrs. *Howard*’s Jointure, and it was admitted that she thereby was intitled to a Redemption of the whole Mortgage; and so it was adjudged in the case of *Browne* and *Edwards*.”

⁷ 1 Vernon 192, *Howard v. Harris*, Mich., C.C. (1683): “It was argued, that it was a Maxim here, that an Estate cannot at one time be a Mortgage, and at another time cease to be so, by one and the same Deed: And a Mortgage can no more be irredeemable, than a Distress for a Rent-charge can be irrepleviable.”

⁸ 2 *Chancery* 43–44, *Colston v. Gardner*, Hill. 32 & 33 Car. 2, C.C. (1680): “The Plaintiff exhibited a Bill for an Account of a Personal Estate, and an Account was decreed, and referred to a Master to take the Account: Exceptions were taken to the Account, and referred back on one Exception. In the interim the Defendant having had a Treaty for the Marriage of his Son, but nothing concluded; he did by Deed in consideration to enable his Son to make a Jointure in case he married, and in consideration that his Son had undertaken to pay his Debts, amounting to 1700 *l.* settle all his Lands upon his Son and his Heirs, the Lands being of far greater value, *viz.* many 1000 *l.* and the Creditors were no Parties to the Deed, and in the Deed a power of Revocation reserved to the Father in case the Son should die without Issue. This was done before the Master made his second Report: and the second Report varied but 11 *l.* from the former, being about 400 *l.* due upon both Reports: Process of the Court was pursued to a Sequestration against the Father and his Assigns, the Son being taken up on Attachment for disobeying the Sequestration; but being examined, excused himself by the Title aforesaid. The Question was, whether the Son was liable to the Sequestration in this Case? Which was much debated by Council on the Son’s behalf.... The Lord Chancellor ... delivered his judgement ... That this Deed or Settlement was made between Father and Son only, and the Friends of the Son’s Wife, nor Wife, no Parts to it.... That a Sequestration does not bind till laid upon it, or at least not till ordered. At Common Law a Man may convey away his Estate before Outlawry.”

⁹ Coverture: “The condition or position of a woman during her married life, when she is by law under the authority and protection of her husband” (*OED*).

¹⁰ 2 *Vernon* 377, *Procter & al’ v. Cowper*, Trin., C.C. (1700): “The Bill was to redeem a Mortgage made in 1642, the Mortgagee entered in 1659, *three* Descents on the Defendant’s Part, and *four* on the Part of the Plaintiff; yet the Length of Time being answered for the greatest Part of Infancy or Coverture; and forasmuch as in 1686, a Bill was brought by the Mortgagee to foreclose, and an Account then made up by the Mortgagee, the Court decreed a Redemption, and an Account from the Foot of the Account in 1686.”

2 *Ventris* 340, *White v. Ewer*, Trin. 22 Car. 2, C.C. (1670): “At a Re-hearing before my Lord Keeper, assisted with Justice *Vaughan* and *Turner*, concerning the Redemption of a Mortgage which had been made above 40 years since, My Lord Keeper declared, that he would not relieve Mortgages after 20 Years; for that the Statute of 21 *Jac. Cap. 16.* did adjudge it reasonable to limit the Time of one’s Entry to that Number of Years: Unless there are such particular Circumstances as may vary the ordinary Case, as Infants, Females-Covert, &c. are provided for by the very Statute.”

¹¹ 1 *Vernon* 418, *Orde v. Heming*, Mich., C.C. (1686): “The Bill was to redeem a Mortgage; and the Defendant demurred, by reason that of the Plaintiff’s own shewing it appeared, the Mortgage was 60 Years old. The Demurrer upon Argument was overruled, because it was charged in the Bill, that the Mortgagor agreed the Mortgagee should enter and hold, till he was satisfied; which is in the nature of a *Welch* Mortgage; and in such Case the length of time is no Objection.” See also doc. 2:10, and n. 6, below.

¹² Lat. he lurks. This is a writ based on the presumption that the summoned person was in hiding.

¹³ 2 *Bacon, Cases* 594: “If a Mortgagor has been absent thirty Years, his Heir apparent may redeem, for it may be presumed when the Mortgagor has not been heard of so long, that he is dead.” See also n. 2, above.

15 *Viner* 468: “9. No Redemption after 40 Years Possession but on a stated Account for turning Interest into Principal.”

¹⁴ 2 *Bacon, Cases* 618: “1. The Profits were set against Interest in an old Mortgage.”

¹⁵ 2 Bacon, *Cases* 681–82: “2. A Bill was preferred for Discovery of Title and Writings. The Defendant pleads that he was a Purchasor for a valuable Consideration *without* Notice of the Plaintiff’s Claim, and so demurs. The Plea was ruled to be ill, *per Lord Chancellor*, because *he did not set forth the particular Consideration; but if that had been expressed, it had been good.*” Bacon also stated in the margin notes: “And so it was held in one *Snag’s Case.*”

1 *Chancery* 34, *More v. Mayhow*, Mich. 15 Car. 2, C.C. (1663): “The Court declared that the Plea in this Case was well enough. It was farther insisted, that the Plea was founded upon the Answer, *viz.* That the Defendant had no notice, &c. And that the point of notice was not well answered, in that the Defendant denied notice at the time of the Purchase only, and the word *Purchase* might be understood when the Contract for the Purchase was made, and it might be he had no notice then, and might have notice after, before, or at sealing of the Conveyance: And if there was any notice before the Conveyance to him executed, that should charge the Defendant.”

¹⁶ 2 Freeman, *Equity* 43, “Millard’s Case,” Mich., C.C. (1678): “A Bill was preferred for Discovery of Title and Writings. The Defendant pleads that he was a Purchasor for a Valuable Consideration, without Notice of the Plaintiff’s Claim, and so demurs. The Plea was ruled to be ill *per Cancellar’*, because he doth not set forth the particular Consideration; but if that had been expressed it had been good; and so it was held in one *Snag’s Case.*” Here, JD also inserted a line from “2 Freem.” to “If after.”

¹⁷ 2 Bacon, *Cases* 678: “The *Master of the Rolls* said, that to be a *Purchasor in the Notion of Equity there must be an actual Contract, and a Consideration paid*, and therefore if at the Time of the Marriage the Deed of 1712 stood revoked, the Trustees should be seised only of a *Moiety* for the Use of *B.* and consequently Lord *Fauconbridge* can be Purchasor no more.”

1 Harrison 380: “Where the plaintiff apprehends the plea to be good, though not true, he may reply to the plea, and take issue upon it, and proceed to examine witnesses as in case of an answer; and in this case where he replies to a plea before it comes to be argued, it is always an admission of the plea as if it had been argued and allowed, only the defendant is put to the proof thereof, and so he may when it is argued and allowed; and if he proves his plea, the bill must be dismiss’d on hearing. So if the plaintiff amends his bill before he argues the plea, it is an admission of the goodness of the plea, as if the same had been allowed on arguing.”

2 Ventris 361, *Anonymus*, Pasch. 35 Car. 2, C.C. (1683): “A Bill was preferred against one, to discover his Title, that *A.B.* might be let in to have Execution of a Judgment. The Defendant pleaded, that he was a Purchasor for a valuable Consideration; but did not set forth, that he had no Notice of the Judgment. And it was over ruled, for ’tis a fatal Fault in the Plea.”

¹⁸ 2 Lutwyche 1424, *Catlin v. Milner & uxor’*, Trin. 7 Will. 3 (1696).

1 Harrison 409: “A Defendant in his plea of a purchase for a valuable consideration omits to deny notice; if the plaintiff replies to it, all the defendant has to do is to prove his plea; and it is not material if the plaintiff proves notice, for it was the plaintiff’s own fault that he did not set down the plea to be argued, in which case it would have been over-ruled.”

¹⁹ Benjamin Chew (1722–1810) was a Quaker-born planter and lawyer. He represented Kent Co. in the Delaware Assembly from 1751 through 1757, serving some of that time as speaker. He was attorney general of Pennsylvania and on the governor’s council. William Till (c. 1697–1766) represented Sussex Co. in the Assembly, served as mayor of Philadelphia, and served on the Delaware Superior Court, as chief justice and later an associate justice. On February 19, Till took a deposition of Thomas Canby about Van Dyke’s discussions with the Paxton and Land families regarding the tract (Interrogatories taken before William Till, Feb. and May 1759, PHi-Logan).

4

Deposition for *Paxton v. Van Dyke*, [February 1759]

Paxtons v Vandyke

John M^cCool.¹ Knew the place where the Children of W[illia]m Paxton {livd & they all {livd on P[axton]'s place at & after his death}}²

The Biggest of the Children were but young. All the Children of movd out of these Parts upwards of 30 Years—& movd to Bucks County as he believes the Reason of his Belief is that it was generally reported so in the Country

==

Knows the Land now in the poss[essi]on of H[enry] Vandyke
W[illia]m Paxton's Family livd there at the time of his d[ea]th

==

Dont think that 80 pounds was the Value of the Land at that time

==

We may Judge his Circumst[ances] were very bad when he mortg[age]d for so small a sum?

AD (PHi-Logan)

¹ John McCool (1696–1761), a Quaker of St. Georges Hundred, New Castle Co., Del., represented the county in the Assembly for over twenty years.

² Windsor, William Paxton's estate, was a 160-acre farm in St. Georges Hundred. The children who survived him were: Abigail Lamplugh Whitely (1700–1778), James (1702–1747), Thomas (1712–1782), Reuben (1705–1800), and Esther Clayton (b. 1711). The plaintiffs in this case were Abigail, Reuben, Thomas, and the heirs of James and Esther.

5

Set Two of Notes for *Paxton v. Van Dyke*, [February–May 1759]

Defy the Gentlemen on the other side to shew one Inst[ance] where a [Pur]chaser under a Mortg[ag]ee ever [pro]tected hims[elf] by a plea of [Pur]chase.

Paxton & Al[ia] v Vandyke	}	In Equity. Newcastle County.
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The Intention of Chancery: The Laws of Humanity & Equity. Calculated chiefly to relieve ag[ains]t 3 th[in]gs **Frauds Accidents & Forfeitures.** Instance of the first. Where a def[endan]t gets a Deed into his hands & suppresses it—[per] Cur[iam] **omnia** presumuntur¹ & will not allow a trial at Law about it. Max. in Eq. 7. {& Ch. Cases 293} As to 2.^{d 2}

(Trustee receives £40 of Inf[an]t's money & is robd of £200 of wh[ic]h) the £40 is part— He shall be allowd the £40 _____

£120 was given with an Apprentice & [pro]vided by Articles th[at] if the master died w[ith]in a Year £60 shoud be returnd— The Master being sick when the Articles were executed & dying w[ith]in 3 weeks after the Bill was to have a greater sum returnd And tho[ugh] the [Par]ties themselves had [pro]vided ag[ains]t ~~Articles~~{Accidents}— Yet it was decreed th[at] 100 Guineas should be returnd. Vern. 460. Max. in Eq. 29.³

As to the 3.^d Point. The Father seizd in Fee dev[ise]d Lands to his D[aughte]r & her Heirs—and his mind is th[a]t if his Son pay her £50 then he shall have the Land—the money was not p[ai]d at the day the Daughter sold the Lands—Son brings his Bill ag[ains]t Buyer Decreed Son shall have the Land pay[in]g the money—for the Court took it in Nature of a security. 2 Ch. Ca. 1. M. in Eq. 45.⁴

These the 3 **grand Objects** of Chancery—& theref[ore] this Court calld to soften the Rigour of the Com[mon] Law—

Its Rule Equality is Equity.

Equity will not assist Forfeitures. 1 Will. 353. 2 Ab. Ca. in Eq. 477.⁵
 =
 Redemption fav[oure]d tho[ugh] M[axim] ever so old—if Int[eres]t paid. 1 Will. 271.⁶
 No Clause or Agreem[en]t tho[ugh] made at the time can

The Nature of Forfeitures. No Reason—No Equity in them No quid [pro] quo but are Advantages taken by one man over the necessities & distresses of another & Chanc[ery] always regulates these Contracts in such manner th[at] neither [Par]ty may suffer thence it becomes the Parent of Orph[an]s & the husband of Widows

restrain the Eq[ui]ty of
Red[empti]on. 1 Will.
269. 1 Vern. 33.⁷

Get more Cases

Q[uæ]re] What Estate
Paxton left?
Q[uæ]re] When
Ej[ectmen]t brou[gh]t by
Paxtons?

It removes the rough hand of Violence
too often Supported by Law & affords a
healing Plaister to those poor wretches
[page break] who have been torn by the
thorns & Briars of the Law.

In this Capacity You now sit The Question is Whether
Pl[ainti]ffs entitled to a Redemption?

==

At first View this case so clear that We evidently have the first
Principles of Justice {Equity} Reason Honesty & Truth on our
side.

==

Forfeitures odious in Equity

==

The Injustice of giving a Feesimple for a Trifle: Especially

==

When contrary to the Intent of the Parties wh[ic]h only designd a
security.

==

[in left margin:] {Def[endan]t cant plead & c a Rule to Answer. Vern.
275.⁸

==

Answer[in]g overrules a plea & plead[in]g or answer[in]g overrules
a Dem[urre]r. 3 P. Will. 81.⁹

==

Repl[icati]on to a Plea allows its Goodness—but it must be
[pro]vd. Harr. 380. 2 Vent. 361.}

==

Here go thro[ugh] the Plead[in]gs & Evid[ence] & then
observe the Equity to be on our Side as open'd Shew the
Evasions of their Answers & th[at] they conceal their Deeds.
{No money averrd to be paid or [what].}

==

Our Cause appear[in]g so fair—so worthy y[ou]r H[onour]s
Attention & Relief. What Obj[ecti]ons can be made on the other
Side—

These Two. The Stat[ute] of Limitations & Purchase without Notice.

== Obj[ecti]on ought not to plead on a Rush to answer. Vern. 275.¹⁰

As to first. Chancery regards the Original the foundation of things: wh[ich] is the best guide to truth.

Why not
foreclosd? If a pilot does not know the different Courses a River runs from its Fountain—he cant know what winds will carry him up that River—& his Ignorance may lead him upon sands & other Misfort[unes]

[in left margin:] {Where Def[endan]t’s answer is contrad[icte]d by one Witn[ess] Chanc[ery] sends an issue down to a Court of Law. Gilb. 134. 1 Vern. 161.}¹¹

Now consider the pure Intention of the Parties at the Beginning of this Affair {Your Hon[ou]rs will always have a Beacon to guide steer by}—& the stream of our Cause will always appear clear notwithstanding all the endeavours of certain Gent[leme]n to muddy it—& give it an ugly complexion.

==

A man in want borrows money of ano[the]r gives Land as Security— for Repaym[en]t Is it not plain th[at] on Repaym[en]t the Land shoud return to the first Owner—this Reason [page break]

This Law. Redemptions extremely favoured. 2 Ab. Ca[.] in Eq 594.¹³

Once a Mortg[age] always a Mortgage. 1 Vern. 33.¹⁴

No Clause or Agreement can restrain the Eq[uity] of Redemption. 1 Vern. 33. 191. 192. 1 Will. 269.¹⁵

Vide 2. Ch. Rep. 44. A Strong Case.

If a [per]son has a Right to redeem part they may redeem the Whole. 1 Vern 33. 35.¹⁶

~~Mortg[age] tho[ugh] ever so old Redeemable if Int[er]est has been paid. 1 Will. 271. And here Mortg[ag]ee in poss[essi]on wh[ic]h the same thing for “On an old Mort[gage] the [P]rofits shall be set ag[ain]st the Interest” 2 Ab. Ca. in Eq. 618.¹⁷~~

Welsh Mortg[age]¹²
Ours like that

{✓} Where M[ortgag]ee enters & there is a Clause in the Mortg[age] to that [pur]pose,

Remark on this word.
Even a Decree of Foreclosure open after 16 Years Vide the Case: & Vide the Cases in Ab. Ca. in Eq.
Vide the Record & Examine the times very exactly.

Obj[ecti]on. The Time began to run in the Father's Life. Answ[er] It did not—for it appears from Adm[inistrati]on comm[itt]ed th[at] W[illia]m Paxton died 1716 & by Def[endan]t's Answer the Lands enterd in 1719.

As to 2.^d Point— [Pro]bable Vandyke did not pay the full Value because of the Defeazance—at least he shoud have shewn it.
~~Has not sworn it~~

Cant deny a thing on Record #
2. Ch. Ca. 48.
“[pur]chaser is obligd to take

Length of time no Obj[ecti]on to Redemption. 1 Vern. 477. 418.¹⁸ Obs[ervati]on. Our Case infinitely stronger for here a [per]fect Deed & only a Defeazance for our security.

Mort[gage] in 1642 redeemd in 1700 the {#} **greatest** part of the time being answerd by Infancy or Coverture. 2 Vern. 377. Vide 2 Vent. 340.¹⁹ Obs[ervati]on So Pl[ainti]ff's—because it appears by the Repl[icati]on wh[ich] is not denied—th[a]t the Mortg[ag]ee enterd on Pl[ainti]ff's {✓} being Infants in 1718 & was only 19 Years in poss[essi]on at the time of Ejectm[en]t brought—& even filing a Latital will prevent the Statute of Limitations. 1 Ins. Cler. {49}²⁰ So Vide 2 Vern. 377. Thus 2 Vern. 418 answerd.²¹

Wherefore every tittle of Pretension to the Stat[ute] of Lim[itati]on falls to the Ground. 3 [pro]ofs of Notice. 1st Not im[pro]v[isi]on; 2.^d V[an]Dyke's Conv[ersati]on ab[ou]t M[ort]g[ag]e. 3.^d His Warr[ant] from the Lands now in [suit?]. 4.th The small Price in Land's²² deed & his C[illegible]

[Pur]chase without notice. Not good—in Law or Equity Observe how shuffling & evasive—Def[endan]t only answers as to **Knowledge**—wh[ich] is positive—Vide the Exceptions & Diff[eren]t impressions on the mind according to the force of Evidence as **susp[ici]on belief Knowledge.**

Besides “plea of purchase[er]” {for valuable Consid[erati]on without Notice of Pl[ainti]ff's Claim} not shewing the [par][ticu]lar Consid[erati]on is ill. Mich. 1678. Millard's Case. 2. Freeman's Rep. 43.

Notice of a decree.”

And so it was held in one Snag’s Case. 2 Ab. Ca. in Eq. 682.²³

3 P. Will. 117.
“Everyone is obligd to take Notice of the Acts of a Court: & So of a Lis pendens.” The Case of Ex[ecut]ors: ib[idem]²⁴

“The master of the Rolls said, that to be a purchasor in the Notion of Equity, there must be an actual Contract & a Consid[erati]on paid. 2 Ab. Ca. in Eq. 678.”²⁵ Nay if after the Execution of a Conveyance.

[page break]

but before paym[en]t of the Consid[erati]on money, the purchasor has Notice that the Vendor has no title to the Lands, this is sufficient to avoid the purchase. Jones & Stanley, Mich. 5 Geo. 2. in Scac., M. S. Ref[p.] 2 Ab. Ca. in Eq. 685.²⁶

These several Cases in Eq ab. Examind. **JD.**

Obs[ervati]on. Def[endan]t has not denied Notice before pay[men]t here—nay has not shewn pay[men]t at all—therefore **#** No Eq[ui]ty at all for him {678. 682.}²⁷

===

I shall not yet rely on our Evid[ence] wh[ic]h makes our Cause as Clear as Light— because I woud follow the Def[endan]t thro[ugh] all his Twist[in]gs & turn[in]gs & convince your hon[ou]rs & all good Men how little Reason or Eq[ui]ty he has on his Side.

==

Remember the Beg[in]nin]g— A Mortg[age] **No [pro]of of real consid[erati]on** by Def[endan]t A Suit in Law by Pl[ainti]ff’s— We the Heirs of Mortg[ag]ee.

Is this Equity? What is but the Fable of the Bitch & her Companion?²⁸ Relate it.

==

Enq[ui]re into V[andyke]’s deed
θ Def[endan]t cannot be supposd ignorant. 2 Vern. 662.²⁹

Uncertainty of Def[endan]t’s Answer. {# Ab. Ca. in. Eq. 334.³⁰ A Strong Case of Evasion in Answer. 1 Ch. Ca. 34.}³¹ Impossible but he shoud hear of such a publick {θ} Transaction— th[at] suff[icien]t for a Notice.

Caveat emptor³² is a Maxim of Laws {Claim[in]g under M[ort]g[ag]ee is implied Notice. Vide Cases transcribd from Vern. & Ab. Ca. in Eq.}

V[ide] 1 Ab. Ca. in
Eq. 331. So 2
Vern. 662.³³

Defy the G[entle]men to [pro]duce one Instance
when [pur]chase from a Mortg[ag]ee w[ith]out
Notice was held a good Plea— The Original
[Cond[it]ion] [runs] thro[ugh] the Estate— & heir
entitled on [per]forming it

==

This not like {Common} Cases of [pur]chasers
for valuable Consid[erati]on for there some body
must lose—& therefore Chanc[ery] will not
compell a man in posse[ssi]on to give up his
Advant[age] at Law only to serve ano[the]r
{X} But here is a Contract relat[in]g to this Land
to be [per]formd Def[endan]t became possest by
Virtue of that Contract {Nay for the very Sum
in the M[ort]g[ag]e & Interest} for otherwise he
would not—

X He th[at] will
have Eq[uity] must
do it.

We willing to [per]form This I averr not the
Case in any Instance cited by the G[entle]men—

Then grant your honours decree for Us
What loss What hardsh[ip] does
Def[endan]t suffer We repay him the money
he has taken [pro]fits for many Years We get
our Land again [*illegible*] A Maxim th[at]
Equality is Equity Is not [*page break*]

Equality is Equity.
Instances of Joint
[tenan]ts. 1 Ch.
Ca. 261. Vern.
217. 361. Max. in
Eq. 16 1 Ch. Rep.
58.³⁴

Is not this Equality? {Forf[eitures] are so odious
in Eq[uity] that it is a maxim “That Eq[uity]
suffers not Advantage to be taken of a pen[al]ty
or Forf[eiture] where Compensation can be
made[”]—& theref[ore] the Wellknown Case of
Cond[it]ions or Marriage in Terrorem.³⁵ So 2
Ch. Ca. 1.³⁶ The Father seizd in fee (vide
Margin)} Is not this giving every one his own?
Who can be discontented but the greedy [Per]son
who desires to swallow all ~~but~~ & not leave a
Morsel of their Parents’ Inheritance to his poor
Children.

Justice is painted with a pair of Scales to weigh
what is fair & even & to distribute impartially

No difficult matter to tell whose scale would be lightest & would kick up—if the Def[endan]t had not thrown two great Lawyers with all their Books into his Side—

~~[written vertically:]
Father seized in fee
devised the Lands to
his Daughter, & her
heirs, & his mind is,
that if his Son pay
to her 50£. then his
Son shall have the
Land; the money
was not paid at the
day; the Daughter
sold the Lands; it
was decreed against
the Vendee; the Son
paying the Money;
for the Court took it
but as in Nature of
a Security 2 Ch. Ca.
1. Note; The
payment of the 50£.
was precedent to
vesting the Estate in
the Son; and yet the
Court reliev'd.~~

But I hope y[ou]r hon[ou]rs will consider our
Youth & Inexperience their Age & Long
Practize—

Their Side must be best argued

==

One th[ing] however their Ingenuity can never
do— they cant [pro]ve black White Nor that
the Def[endan]t had not Notice of our Claim
when it is Sworn (Here shew the Evidence)
Thus either on the Law or Evidence the
Eq[ui]ty is clearly for Us: {Only wanted a
hearing but &c} therefore dont doubt but You
will fullfill the words of good Job “That You
will pluck the spoil out of the spoiler’s mouth,
& cause the Widow’s heart to sing for Joy.”³⁷

That Your Petitioners may not have the
melanch[oly] Reflections when they pass by the
Inherit[ance] of their Father, to say “There I
was born, there I was fed at my Father’s table[,]
there I was bred up—but now Strange men
reap our harvests & Lo! I die for want.”

But Pov[er]ty an infirm old man th[at] walks
s[lowly]— Wealth lusty &c & often throws him
down— At length &c If there is a sight
upon Earth th[at] Heaven can behold with
Pleasure It is to view good Judges
imitat[ing] itself in [pro]tecting the poor &
oppress— For the Description of wicked Men
is holy Writt is “They judge not the Fatherless
neither doth the Widow’s Cause come unto
them.”³⁸

But We dont doubt—

Vandyke has actually prosecuted a Warr[antia] Chartæ³⁹ ag[ains]t Lands his [torn] for this Very Land. [page break]

1. What Eq[uity] to give an Estate for a small sum? {V[ide] McCool's Depos[iti]on⁴⁰ & 2 Ab. Ca. in Eq. Long Case⁴¹ & of French [illegible] Paxton's Disp[osition?] V[ide] McCool's [dep[osition]]}
2. When Vandyke has rec[eive]d the [Pro]fits to the full satisf[acti]on of his Sum
3. When he has a Warr[an]ty from Land He expected it His Expect[at]ion is confirmd.
4. Stat[ute] of Lim[itati]on not fav[oure]d 1 Ab. Ca. in Eq. 314—never allowd w[ith]out A Descent from the M[ort]gage wh[ich] not here as V[an]Dyke [pur]chasd⁴²
5. We co[ul]d not divine a M[ort]gage existed for no Attempt to foreclose as in some other Cases where Red[empti]on decreed—2 Ca. in Eq. ab.⁴³ Is not conceal[in]g a M[ort]gage not recorded the same as an AOD⁴⁴ Deed & Def[easance?] #Besides is not V[an]Dyke's not im[pro]v[ing] an Equal [Pro]p[erty] of its being a M[ort]gage*— [in left margin:] {*And his tak[in]g a Mort[gage]} Read Canby's Depos[iti]on. Did they not acknowl[edge] it a M[ort]gage by Cond[iti]on. Wh[ich] is fairest a Private Entry or a Just[ice] painted with Scales Whose wo[ul]d kick up. Publick Att[emp]t to foreclose Why shoud his Honesty hurt him. Esp[ecial]ly consid[er]in[g] our Act of Assembly.⁴⁵
- 6.^{ly} There must have been Interest paid— We have not [pro]vd Compl[ainan]ts Right— Answ[er]. Our Power of Att[orne]y their Answer w[ith]out except[in]g after 7 or 8 Years— Humph[ries] [D[ep]osition]⁴⁶
- 7.^{ly} Heirs fav[oure]d in Law & a good Arg[umen]t ag[ains]t a Devise Th[at] it wo[ul]d disinherit Besides here actually must have been the 3 Inabilities in the Stat[ute] Inf[an]cy Feme Coverture— & out of the Government.

ADS (PHI-Logan)

¹ Lat. By the court's decision all things are presumed (to have been done rightly).

² *Maxims* 7: "(5.) The Defendant by a Trick, got the Deed into his Hands, and burnt or cancelled it: *Per Cur.* where Deeds are suppressed, *Omnia præsumentur*, and would not direct a Trial at Law, which had not been denied, had not the Defendant been guilty of the Fraud."

1 *Chancery* 293, *Gartside and Elizabeth his Wife, and Ann Ratcliff, an Infant v. Peter Ratcliff and Others*, 28 Car. 2, C.C. (1676): "The Plaintiff had a Decree according to the Bill, and confirmed on Re-hearing of the Cause in *Hill. 28 Car. 2.* by the Lord Chancellor, because the Father suppress and got into his hands the Writing, which was done for his advantage, for he needed not have so done for *Henry's* advantage; and where Deeds are suppress *omnia præsumentur* [Lat. all things presumed]. And the Chancellor would not allow Trial at Law whether the Father survived to enable the Recovery or not."

³ 1 *Vernon* 460, *Newton v. Rowse*, Trin., C.C. (1687): "The Court, notwithstanding the Parties themselves had provided against Accidents, and agreed for a certain Sum, *to wit*, 60 *l.* to be returned, in case *Child* died within a Twelve-month, and that *modus & convention vincunt legem* [Lat. manner and agreement overrule the law], yet decreed 100 Guineas to be paid back to the Plaintiff the Father."

Maxims 29: "(8.) A sum of 120 *l.* was given an Apprentice; and by the Articles it was provided, that if the Master died within a Year, 60 *l.* should be returned; the Master being sick when the Articles were executed, and dying within three Weeks after, the Bill was to have a greater Sum returned; and although the Parties themselves had provided against Accidents; yet it was decreed that one Hundred Guineas should be paid back."

⁴ 2 *Chancery* 1, *Bland v. Middleton*, 30 & 31 Car. 2, C.C. (1679): "By Will in writing *J.S.* seised in Fee deviseth Land to his Daughter *E.* and her Heirs; and his mind is, if his Son *A.* pay to her 50 *l.* then his Son should have that Land; the Mony was not paid at the day appointed by the Will; the Daughter sells the Land, it was decreed by the Lord Chancellor against the Vendee, he paying the Mony, for he took it but as in the nature of a Security, though it was objected by Sir. *Fr. Winnington*, that this is a contingent Devise to the Son on Payment, and then too, if he had performed and paid, he could have had but an Estate for Life, the Remainder or Reversion in Fee to the Daughter."

Maxims 45: "(3.) The Father seised in Fee, devised the Lands to his Daughter and her Heirs; and his Mind is, that if his Son pay to her 50 *l.* then his Son shall have the Land; the Money was not paid at the Day; the Daughter sold the Lands; it was decreed against the Vendee; the Son paying the Money, for the Court took it but as in Nature of a Security."

⁵ 1 *Peere Williams* 352–53, *Vane v. Fletcher*, Trin., C.C. (1717): "Sir *Henry Fletcher*, having a considerable Estate in Fee-simple in *Cumberland*, and being converted to the Popish Religion, conveyed his Estate by Settlement to Trustees in Fee, in Trust that he should have a Rent-Charge thereout for this Life, and then in Trust to secure his Sisters Portions; and afterwards to the Use of *Henry Fletcher*, a remote Relation and a Papist.... Sir *Henry Fletcher* died without Issue, and *Henry Fletcher* the Papist had no Issue, and *Richard Vane* the Remainder-man, together with the Sisters and Heirs at Law of Sir *Henry Fletcher*, brought their several Bills setting forth, that *Henry Fletcher*, being a Papist, was by the Act of the 11 & 12 *W. 3. cap. 4 sect. 4* disabled to take any real Estate.... Lord Chancellor at first inclined to direct an Issue to try, whether *Henry Fletcher* was a Papist at the Time that this Remainder should have

vested in him; and this was desired by the Plaintiffs; but in regard the Act of Parliament inflicted a Forfeiture and Disability, (for which Reason it was to be taken strictly,) and the said *Henry Fletcher* being above eighteen Years of Age at the Time of the making of the Settlement, and so not within the Clause of retrieving the Estate, by returning to the Protestant religion." In the margin notes Peere Williams also stated: "Equity not to assist any one to take Advantage of a Forfeiture."

2 Bacon, *Cases* 477: "1. Equity will not assist any one to take Advantage of a Forfeiture."

⁶ 1 Peere Williams 271, *Floyer v. Lavington*, Mich., C.C. (1714): "And, that though a Mortgage were made never so many Years since, yet if a Mortgagor, and those claiming under him had continued to pay Interest, the Length of Time was, in such Case, no Objection to the Right of Redemption."

⁷ 1 Peere Williams 269, *Floyer v. Lavington*, Mich., C.C. (1714): "The Clause restraining the Redemption to the Life of the Mortgagor is of no Force; for an Estate once redeemable cannot be rendered irredeemable by any Words or Agreement made at the same Time."

⁸ 1 Vernon 275, *Lloyd v. Gunter*, Mich., C.C. (1684): "The Defendant had pleaded a former Decree in Bar to the Plaintiff's Bill: But the Plea was not suffered to be opened, for that it came in after a Proclamation returned; and also came in by a general Commission which was to take the Answer only, and not to plead Answer or Demur."

⁹ 3 Peere Williams 81, *Jones v. Com' Stafford & al'*, Mich., C.C. (1730): "And upon Time granted to answer, the Defendant may plead; wherefore it must be inconsistent for a Man to say, 'I demur, and therefore ought not to answer,' and yet at the same Time to answer; consequently a Defendant cannot plead and demur to the same Part of the Bill; and as Answering to the same Thing over-rules a Plea, so *à fortiori* [Lat. with stronger reason] Pleading or Answering to the same Thing over-rules a Demurer."

¹⁰ For 1 Vernon 275, see n. 8, above.

¹¹ Gilbert 133–34: "And yet if there be but one Witness against the Defendant's Answer, the Court will direct a Trial at Law to try the Credibility of that Witness, for it is fit when there is one Witness only in Counterballance to the Defendant's Answer, and on that one Witness the Decree is to be founded, that the Court should inform their Conscience of his Credibility by a Trial at Law ... but when there are two Witnesses against the Answer, then there is so great an Overballance of Credibility, that the Plaintiff ought not to be delayed in a Trial at Law."

1 Vernon 161, *Alam v. Jourdan*, Pasch., C.C. (1683): "There being but one Witness against the Defendant's Answer, the Plaintiff could have no Decree."

¹² Welsh mortgage: A "mortgage in which the mortgaged property is conveyed to the creditor, who receives rent and profits in lieu of interest without power of sale, the borrower being able to redeem the property at any time upon payment of the principal" (*OED*).

¹³ 2 Bacon, *Cases* 594: "3. If Mortgagee assigned over his Mortgage, yet he must be made a Party in a Bill of Redemption, that he may account for what Profits he did receive in his Time. This was held by the Court, to be the daily Practice."

¹⁴ For 1 Vernon 33, see docs. 2:2, n. 9, and 2:3, n. 6, both above.

¹⁵ For 1 Vernon 191, see doc. 2:2, n. 9, and for 1 Vernon 192, see doc. 2:3, n. 7, both above. For 1 Peere Williams 269, see n. 7, above.

¹⁶ 1 Vernon 35, *Danvers v. Earl of Clarendon*, Hill., C.C. (1681): "The late Earl of *D.* by his Will devised all his Goods in *Cornbury* house to the Lady *Gargrave* for life, and after her decease to the Heir of Sir *John Danvers*: And the Point was, whether he that was Heir of Sir *John Danvers* should take these Goods as Devisee, and the said Goods go to his Executors, altho' such Heir dye in the life-time of the Lady *Gargrave*; Or

whether he that was Heir of Sir *John Danvers* at the time of the Lady *Gargrave's* Death should have them." For 1 Vernon 33, see doc. 2:2, n. 9, and doc. 2:3, n. 6, both above.

¹⁷ For 2 Bacon, *Cases* 618, see doc. 2:3, n. 14, above.

¹⁸ 1 Vernon 477, *Fulthrope v. Foster*, Mich., C.C. (1687): "And as touching *Welch* Mortgages, he [the Master of the Rolls] thought, if the Value was excessive, the Court would Decree an Account, notwithstanding the Agreement for retaining the Profits in lieu of Interest." See also n. 12, above.

For 1 Vernon 418, see doc. 2:3, n. 11, above.

¹⁹ For 2 Vernon 377 and 2 Ventris 340, see doc. 2:3, n. 10, above.

²⁰ *Instructor* 49: "You may save the Statute of Limitations, by suing out of this Bill of *Middlesex* [i.e., 'A process by which the Court of the King's Bench in Middlesex obtains jurisdiction over a defendant who resides in a county outside the jurisdiction of the Court, by alleging a fictitious trespass in a county over which the court has jurisdiction' (*BLD*)] within six Years after the Debt, & contracted, and getting of it returned *Non est inventus* [Lat. The person is not to be found] by the Sheriff, then enter it on a Roll, and File the *B.M.* with the Signer of the *Latitats* ['A writ which supposed the defendant to lie concealed and which summoned him to answer in the King's Bench' (*OED*)], and carry the Roll to the Clerk of the *Docquets* who will enter it, and you afterwards file the Roll as in common Cases."

²¹ For 2 Vernon 418, see doc. 2:2, n. 10, above.

²² Francis Land, for whom see doc. 2:2, n. 13, above.

²³ For 2 Freeman, *Equity* 43, see doc. 2:3, n. 16, above.

²⁴ 2 *Chancery* 48, *Lockner v. Strode*, 32 & 33 Car. 2, C.C. (1680): "[I]t was the Plaintiff's own Agreement to pay it out of the Profits, and the Under-Sheriff was but his Substitute; for if the Profits did not extend to 400 *l.* then he was not to pay so much but to be accountable: And if they amounted to more, the Defendant had no power to call him to account for any more than the 400 *l.* only."

3 Peere Williams 117, "Mr. Herbert's Case," Trin., C.C. (1731): "With regard to what is alleged by way of Excuse, that the Parson and the pretended Guardian had no Notice of the Infant's being a Ward of the Court; it is to be observed, that the Commitment of the Wardship to Sir *Thomas Clarges* was an Act of the Court, and in a Cause then depending, of which every one at his Peril is concerned to take Notice, in the same Manner as of a *Lis pendens* [Lat. a pending legal action or notice of one]. Surely it may be as well presumed every one is apprised of the Proceedings of this Court, as that all Executors should be presumed to take Notice of all Judgments even in the inferior Courts of Law, and therefore are not to pay Bonds before such Judgments, but at their Peril."

²⁵ For 2 Bacon, *Cases* 678, see doc. 2:3, n. 17, above.

²⁶ 2 Bacon, *Cases* 685: "9. If after the Execution of a Conveyance, but before Payment of the Consideration Money, the Purchasor has Notice that the Vendor has no Title to the Lands, this is sufficient to avoid the Purchase."

²⁷ 2 Bacon, *Cases* 682: "3. Defendant pleaded himself a Purchasor for a valuable Consideration, but ruled no good Plea, in regard he did not *plead himself a Purchasor from some of the Plaintiff's Ancestors*; for a Purchase from a Stranger, without Title, was held no good Plea; and therefore the Defendant was ordered to answer." For 2 Bacon, *Cases* 678, see doc. 2:3, n. 17, above.

²⁸ In "The Hound-Bitch and her Companion," a dog about to give birth asks her friend for the use of her kennel, which the friend grants. When the friend asks for her dwelling back, the first dog finds excuses for not vacating the kennel, until her puppies are grown enough to resist any effort to evict them. The moral of the story is, "*We never fail to regret whatever Favours we bestow on the Worthless. Before we can recover what may have been lent them, we must go to Law, nay we might fight. Admit 'em but into your*

Parlour, and they'll soon range over every part of the House." Jean de La Fontaine, *Fables and Tales* (London: A. Bettesworth and C. Hitch, and C. Davis, 1734), 47.

²⁹ 2 Vernon 662–63, *Drapers Company v. Yardly & al'*, Trin., C.C. (1710): "Sir William Boreman devised to John Boreman in Tail Male, and if he died without Issue Male, to Yardley in Tail Male, but to pay to the Plaintiffs 500 l. and 1000 l. Yardley afterwards levied a Fine, (on which was five Years Non-claim) to the Use of him and his Heirs; and grants a Rent-charge of 100 l. per Ann. to the Defendant Smith, and mortgages to Norcliffe. Lord Chancellor. The Fine and Non-claim no Bar to the Plaintiffs, the Legatees under the Will; Yardley having no Title, but under the Will, is implicate Notice: And all other Purchasers, if any, to be brought in and contribute."

³⁰ For 1 Bacon, *Cases* 334, see doc. 2:2, n. 5, above.

³¹ For 1 *Chancery* 34, see doc. 2:3, n. 15, above.

³² Lat. May the buyer beware.

³³ For 1 Bacon, *Cases* 331, see doc. 2:2, and n. 8, above.

³⁴ 1 *Chancery* 261, *Anonymus*, Trin. 27 Car. 2, C.C. (1675): "The Plaintiff Executor for Children was to purchase Lands for them, and treated with the Defendant, who affirmed that the Lands were 250 l. per annum value, and offered to take a Lease at that rate for fourteen years; and did take it, and secured the Rent by Lands of lives worth 60 l. per annum, but paid not the Rent for five years. Whereupon a Re-entry was made according to a Condition in the Lease. And the Lands so entered into possessed for divers years. The Vendor could have no Relief, against the collateral security, unless payment were of the Arrears of the 250 l. per annum due before the Re-entry as well as after the Re-entry. The Lands sold being worth by 160 l. per annum."

1 Vernon 217–18, *Domina Speake v. Domina Speake*, Hill., C.C. (1683): "The Bill was to have a Jointure, defective in Value, made good; the Husband having Covenanted, that the Lands settled for the Plaintiff's Jointure were 400 l. per Ann. whereas they were by 350 l.... It was Objected for the Defendant, that this Covenant for the Value was only in the first Articles, and not in the Jointure Deed; and that therefore the Articles being Executed, and this Settlement of a Jointure, wherein there is no Covenant as to the Value, accepted as a Performance of the Articles, the Plaintiff ought not now resort back to the Covenant; and tho' this Settlement was made when the Plaintiff was an Infant and a Feme Covert, and so no Acceptance of hers could conclude her, yet it was accepted by her Father, with whom the Articles were made, and he transacted this whole Affair on her behalf."

1 Vernon 361: *Usher and Prime v. Ayleworth, Edmonds & al'*, Hill., C.C. (1685): "For the Plaintiff it was insisted, that Survivorship was against Equity, and that by the Justice of this Court, if two joint Purchasers pay Share and Share alike for a Purchase, and one dies, his Representative shall be relieved against the Survivor for a Moiety of the Purchase."

Maxims 15–16: "(17.) If you sue in Chancery an Executor of one Obligor, to discover Assets, you must make all the Obligors Parties, that the Charge may be equal."

1 *Chancery* 58, *Fleming v. Walgrave*, 16 Car. 2, C.C. (1664): "The Question was ... who was the Administrator to the Lady, and also to the *Feme Sole*, who should have the Benefit of this Lease? The Court was of Opinion, That it was not in the Power of Sir Edward and his Lady to have disposed of this Lease otherwise than for the benefit of the *Feme Sole*, if she had lived, and that Francis Copledike as Administrator to her, and also to the Lady, was well entituled to the benefit of the Lease, and so decreed it."

³⁵ Lat: "In terror or warning; by way of threat. Applied to legacies given upon condition that the recipient shall not dispute the validity or the dispositions of the will; such a condition being usually regarded as a mere threat" (*BLD*).

³⁶ For 2 *Chancery* 1, see n. 4, above.

³⁷ Job 29:17 and Job 29:13.

³⁸ Is. 1:23.

³⁹ Lat. of a warranty of charter. “A writ allowing a tenant enfeoffed with a Warranty, who has impleaded in as assize or other action in which the tenant could not call upon the warranty, to compel the feoffer to assist the tenant with a plea of defense, or else to pay damages and the value of the land, if it is recovered against the tenant” (*BLD*).

⁴⁰ See doc. 2:4, above.

⁴¹ Possibly a reference to 2 Bacon, *Cases* 223: “4. One seised in Fee of some Lands, and possessed of Leases for Years of other Lands, devises the Lands in Fee to *A.* and the Leases to *B.* and dies indebted by Bond; on a Deficiency of Assets both the Devisees shall contribute in Proportion to the Value of the respective devised Premises towards Payment of the Bond Debts; but if the Devise had been to *A.* of all the Rest of the Testator’s Estate, then *A.* should have paid the Debts.”

⁴² 1 Bacon, *Cases* 314: “2. A Bill was exhibited to redeem a Mortgage; to which the Defendant demurred, because by the Plaintiff’s own shewing, it appeared the Mortgage was sixty Years old; but upon Argument the Demurrer was over-ruled, because it was charged in the Bill, that the Mortgagor agreed the Mortgage should enter, and hold till he was satisfied; which is in the Nature of a *Welsh* Mortgage; and in such Case the Length of Time is no Objection.”

⁴³ Most likely a reference to 2 Bacon, *Cases* 600.

⁴⁴ That is, affidavit of descent, how the heirs of a deceased person establish their chain of title to the deceased’s property.

⁴⁵ Possibly “An Act for Taking Lands in Execution for Payment of Debts,” passed between 1728–36, *LGD* (1741), 55–61. For Thomas Canby’s deposition, see PHI-Logan.

⁴⁶ For the May 14, 1759, deposition of Leonard Humphries (d. 1777), of New Castle Co., Del., see Interrogatories taken before William Till, Feb. and May 1759, PHI-Logan.

6

Set Three of Notes for *Paxton v. Van Dyke*, [February–May 1759]

		No Interest from our Tender.
Paxtons	} In Equity.	I was afraid of their [Ing[enui]ty] then
v		state the Cases {Rem[ar]k th[at] no time or
H[enry]		Cond[it]ions w[oul]d restrain
Vandyke		Red[empti]ons.}
		Not one Case but where poss[essi]on began in Fathers Lifetime.

M ^r . Chew.	A poss[essi]on of 34 Years allowd by Pl[ainti]ff
They to save time	in Land & V[an]Dyke [<i>illegible</i>] { . } Answ[er]
&c Answ[er]. Did	That We dont—for We enterd on the Premises
these	& claimd V[ide] Co. Litt. 49. b. 245. {b.} ¹ 16
G[entle]men ever	Years ago So that they entring in 19 & We
save time at their	claim[in]g in 43— There was only 24 Years
Client’s Expence	poss[essi]on.

==

An Abs[urd][i]ty
if Right to
redeem wo[ul]d
begin in
An[ces]tors time
of poss[essi]on.

==
And if a
Mort[gagee]
continues in
poss[essi]on 19
Years & dies his
Children may
lose the place.

Here the
G[entle]men
skipd to a 2.^d
Arg[umen]t

What Regard to
V[an]Dyke's

Depos[iti]on
When he had
sworn directly
contrary to a
Record? as to
time—and as to
his Knowl[edge]
of Paxton's
Title—When he
has brou[gh]t a
Warr[antia]
Charte. 2 Vent.
340. Ab. Ca. in
Eq. 315. Gilb.
Rep. 185. {2
Vern. 418.}²
Abs[urdi]ty if
time to redeem
beginning
dur[in]g the
Ancestors
poss[essi]on.

The 20 Years run from the time of the Day in
the Mortg[age] Answ[er] Then the Co[ur]t must
say they were in poss[essi]on when they were
not—{conseq[uent]ly in 39 they were [20] Years
in poss[essi]on}—besides We were obligd to
guess at the Contents of a Deed they conceald.

Our Bill mere Allegation till our [Pro]jofs—
==

The G[entle]man says Paxton's M[ortgage] ought
to be presumd a Welsh M[ortgage]
Answ[er]. {but only presumption} Omnia
presumuntur &c Case of the Jewel Str. 505.³
==

How does he [pro]ve th[at] V[an]Dyke ent[ere]d
in 1719— Answ[er] By the Date of their Answer
& Paxton's Death.

The G[entle]man [*illegible*] {plays} with
Words—upwards. Answ[er]. Words are construed
most strongly ag[ains]t Speaker. The word
upwards in their sense must mean 3 Years.

Besides they shoud [pro]ve their Entry before
Paxtons Death— But McCool swears the family
livd there at & after his Death.

M^r. Chew. If the Time did not begin in their
Fathers time—No Length of Time woud barr—
A good Cont[ract]

==
The Act of Lim[itati]on does not abs[olute]ly
barr in Chanc[ery] Ca. in E[q]
Ab. 315. so 2 Vent. 340—without [par][ticu]lar
Circumstanc[es] 2 Ca. in Eq. ab.

== Not one C[ase] by C[hancery] but where
poss[essi]on began in Father's Lifetime.
In the Year 1735—No more paid than 135£ that
is the Princ[ipal] & Int[eres]t & 16 Years ago—
Whitely off[ere]d £450 for the same Land— Why
then shoud V[an]Dyke be entitled to this
Enormous [Pro]fits rather than the [just
[*illegible*]] [*page break*]

Act of Assembly for Foreclosure

If one had a Right to demand it bars the Red[emption]— Answ[er].
The Injustice of this Doctrine—2 Vern. 418—⁴ Where only the
greatest Part accounted for. and 1 Vern. 33—⁵ Red[emption] so
fav[oure]d that where a [Per]son has a Right to f{r}edeem part They
may redeem the **Whole**.

==

M^r. Chew. No Length of Time bars a fraud. Answ[er]. We g[ui]lty of
no fraud— But We charge them with fraud—

They enter privately

They never foreclose

M^r. Moland. What coud Land do but enter? Answ[er] Servd Sci[re]
fa[cias] in the House. Co. Litt.⁶ Answ[er] They
were the rigorous Rules of Com[mon] Law But
unless y[ou]r Hon[ou]rs [pre]fer Max[ims] in Lawbooks
to Rules in Chanc[ery] Author[itie]s &c.
Besides no Descen[dan]t cast from Land because
V[an]Dyke is a [pur]chaser.

1 Ab. Ca. in Eq. 314.⁷

AD (PHi-Logan)

¹ 1 Coke, *Institutes* 49 b.: “But if the lessor and lessee come upon the Ground, of purpose for the lessor to make, and for the lessee to take livery, there his entry vests no actual possession in him until livery be made, for *Affectio tua nomen imponit operi tuo* [Lat. Your disposition gives character to your work]. And therefore if it be agreed between the Disseisor and Disseeisee, that the Disseeisee shall release all his right to the Disseissor upon the land, and accordingly the Disseeisee entreth into the land, and delivereth the Release to the Disseisor upon the Land, this is a good Release, and the entry of the Disseeisee, being for this purpose, did not avoid the Disseeisin, for his intent in this case did guide his entry to a special purpose.”

1 Coke, *Institutes* 245 b. – 246 a.: “Also if an Infant within age hath such cause to enter into any Lands or Tenements upon another, which is seised in fee, or in Fee tail of the same Lands or Tenements, if such man who is so seised, dieth of such estate seised, and the Lands descend to the Issue, during the time that the Infant is within age, such descent shall not take away the entry of the Infant, but that he may enter upon the issue which is in by descent for that no laches shall be adjudged in an Infant within age in such a case.”

² Van Dyke’s deposition has not been found.

For 2 Ventris 340, see doc. 2:3, n. 10, above.

1 Bacon, *Cases* 315: “2. If a Man enters into a Bond, in which he binds himself and his Heirs, and dies, leaving a Real Estate to descend to his Heir, subject to a Mortgage for Years, and the Heir sells the Equity of Redemption; the Obligee cannot redeem the Mortgage, without first having a Judgement at Law against the Heir.”

Gilbert, *Reports* 185, *Floyd v. Mansell*, Hill., 12 Geo., C.C. (1726): “In 1697 the Plaintiff’s Father mortgaged the Lands in Question to the Defendant, being about 28

l. a Year, for securing 300 l. in 1698, the Mortgage being forfeited, the Defendant recovered Possession by Ejectment, and brought a Bill to redeem or be foreclosed, and had a Decree accordingly, which Decree was signed and inrolled in 1701; in 1702 the Plaintiff's Father died, and the Plaintiff continued an Infant till 1709, when he came of Age.... *Lord Chancellor* dismissed the Bill, but without Costs; and laid great stress on the Length of Time, the Plaintiff being of Age 12 Years before Filing his Bill."

For 2 Vernon 418, see doc. 2:2, n. 10, above.

³ 1 Strange 505, *Armory v. Delamirie*, Hill. 8 Geo. 1, B.R. (1722): "The plaintiff being a chimney sweeper's boy found a jewel and carried it to the defendant's shop (who was a goldsmith) to know what it was, and delivered it into the hands of the apprentice, who under the pretence of weighing it, took out the stones, and calling to the master to let him know it came to three half-pence, the master offered the boy the money, who refused to take it, and insisted to have the thing again; whereupon the apprentice delivered him back the socket without the stones. And now in trover against the mater these points were ruled: 1. That the finder of a jewel, though he does not by such finding acquire an absolute property or ownership, yet he has such a property as will enable him to keep it against all but the rightful owner, and consequently may maintain trover. 2. That the action well lay against the master, who gives a credit to his apprentice, and is answerable for his neglect. 3. As to the value of the jewel several of the trade were examined to prove what a jewel of the finest water [i.e., the 'transparency and lustre characteristic of a diamond or other gemstone, or a pearl. Often with preceding adjective characterizing the appearance of a particular stone or pearl, or (especially) indicating its quality as assessed in terms of its transparency and lustre' (*OED*)] that would fit the socket would be worth; and the Chief Justice directed the jury, that unless the defendant did produce the jewel, and shew it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages: which they accordingly did."

⁴ For 2 Vernon 418, see doc. 2:2, n. 10, above.

⁵ For 1 Vernon 33, see doc. 2:2, n. 9, and doc. 2:3, n. 6, both above.

⁶ See n. 2, above.

⁷ For 1 Bacon, *Cases* 314, see doc. 2:5, n. 42, above.

7

Notes on *Ruth Mendenhall v. Samuel Broom*, February 1759

In November 1755, the Pennsylvania Assembly passed a militia law providing for the establishment and discipline of a military force to defend the colony during the French and Indian War (1754–63).¹ The law created the province's first formal militia established by legislation, and functioned to raise reserve forces until George II repealed the law on July 7, 1756. The Assembly was unable to pass another militia bill until the American Revolution. Where the Pennsylvania legislature failed, however, the Assembly of the Three Lower Counties had already succeeded.

While the Pennsylvania Assembly was locked in a battle with Lieutenant Governor William Denny over another militia bill, and over his supposed favored treatment of the Lower Counties when it came to

raising money for defense, the Lower Counties were preparing to renew its existing militia law of March 24, 1756. On October 26, 1757, the Assembly of the Three Lower Counties, led by Speaker Benjamin Chew (1722–1810), presented Denny with an address intended to “obviate and confute the high Charges made against the preceding Assemblies” by the Pennsylvania legislature. Chew related a history of cooperation with royal requests for assistance, of raising money, and of “establishing and regulating a Militia within this Government” since October 1755. Chew objected to the charge that the law was burdensome and “occasioned much Distress and Persecution among the People.” On the contrary, he argued, it was a “known Truth” that the law “was esteemed equal and just, both in the Colonies and at Home,” that is, in Britain. In fact, the law’s renewal had not galvanized any resistance from the people. Unlike Pennsylvania, the Lower Counties had a “proper Militia Law” that put “Arms in the Hands of those who have their Lives, Families, Fortunes, and every Thing that is dear and valuable at Stake, and teaching them how to use them.”²

The Assembly of the Lower Counties renewed the militia law on November 5, 1757, with a provision that it would be in force until the war with France ended.³ Chew’s assurance that the law had the people’s support was not entirely true. Unlike Pennsylvania’s failed law that made service voluntary, Delaware’s law compelled every male over seventeen and under fifty years of age to enlist and accouter himself or face fines. Such compulsion did not sit well with pacifists who refused to muster. One objector, Joseph Nickols, a Quaker, was summoned before a magistrate to explain why he had not complied with the law. Despite his protestations that he could not enlist in the militia because of the dictates of his conscience, constables seized his cow to pay his fines.⁴

Although details of *Mendenhall v. Broom* are unknown, the basic situation is like Nickols’s case and it could be surmised that the plaintiff, Ruth Mendenhall, whom it appears JD represented, believed her cow had been unjustly confiscated and sold as a penalty under this law for the failure of one or more of her sons to muster. This document is placed in accordance with JD’s docket.

Mendenhall ⁵	}	Tried in Febr[uar]y Term 1759
v		
Broom		

John Dickinson Writings and Correspondence

Ruth Mendenhall }
v
Samuel Broom }

Replevin of a Cow
Case. The Cow taken on on a Warr[an]t
from a Justice on the Militia Law.

Benja[min]
Mendenhall.⁶

My Mother livd with me after &c My
brother¹⁰ bought a place in New Castle &
Mother carried h[er] Cattle—this Cow's
Dam¹¹ was ~~in~~{with} Calf—I knew it to be
the same by a star in the forehead—
Mother came into ~~this Co~~[un]ty my
brother 4 years ago—~~then 10 days~~
~~old.~~{— } saw it twice or 3 times

Obs[ervati]on It was his
Mother's at that time
[pro][per]ty might be alterd
since.

~~Was any Objecti]on made
at the time of
Distr[ainment]
{==}
Was any claim made at the
Sale?~~

I went with a Replevin a Year & half after
Never saw her in the mean time {I
bought this Cow's Dam of &c I
bought 6 Cows of my Mother
{interested}}
=

Abigail Mendenhall.⁷

Mother's Cow & claimd at the time Never
saw the Cow in Broom's poss[ess]ion.
Never saw the Cow milkd

[Per]chaser w[ith]out
Notice & innocent.
Without this [per]chase the
Law woud have been void
& useless.
Art to deceive &c

Eliz[abeth] Cr[os]hman's Depos[iti]on.
Saw this Cow often milkd

James Kitley.⁸

Ruth Mendenhall told Me this Cow was
her's. She had 4 Cows besides this
heifer— which makes the six.

Tho[ma]s Ogle.⁹
Obs[ervati]on. Stephen
interested & sp[ea]ks
ag[ains]t himself.

Sonder said he demanded any thing
else— Stephen Mendenhall¹² said the
Cow was his & was **stolen**. then said it was
his Mother's
I told him he contrad[ict]s himself [page
break]

Saw Advertisements put up at my house & at Newport.¹³

Colo[nel] Armstrong.¹⁴ Sonder advertised according to Law— 2 sold
at Newport several people there
No **claim** of Mend[en]hall at the Sale.

Obs[ervati]on] Let it lurk
in Private.¹⁵

AD (PHi-Logan)

¹ “An Act for the Better Ordering and Regulating Such as Are Willing and Desirous to Be United for Military Purposes Within this Province,” Nov. 25, 1755. See *ARGH*, 243–47.

² See Benjamin Chew, “An ADDRESS to the GOVERNOR from the ASSEMBLY,” *PG*, Nov. 10, 1757.

³ See 2 *LGD* (1763), 20.

⁴ See Scharf, 1:142.

⁵ Ruth Gilpin Mendenhall (1697–1760), of Chester Co., Pa., was the daughter of Joseph Gilpin (1664–1739) and the widow of Joseph Mendenhall (1692–1748). Ruth and her sons, Benjamin, Isaac, Jesse, and Stephen, noted below, were all Quakers.

⁶ Benjamin Mendenhall (1729–1797) was a yeoman of Chester Co. He later became a Wilmington, Del., merchant.

⁷ Abigail Harry Mendenhall, daughter of William Harry (d. 1758), of Chester Co., was Jesse Mendenhall’s wife.

⁸ Possibly James Kitely (1735–1827), a Quaker minister who eventually moved to Lycoming Co., Pa., where he became a schoolmaster.

⁹ Possibly Thomas Ogle (1721–1803), of New Castle Co., Del.

¹⁰ Isaac Mendenhall (1719–1803), a Chester Co. farmer.

¹¹ Dam: “A female parent (of animals, now usually of quadrupeds)” (*OED*).

¹² In 1759 Stephen Mendenhall was a yeoman of Christiana Hundred, New Castle Co.

¹³ That is, Newport, New Castle Co.

¹⁴ John Armstrong, Sr. (1717–1795) was an Irish-born surveyor who immigrated to Pennsylvania in the mid-1740s. He worked for the Penn family, laying out the first plat for the town of Carlisle, Pa. On Sept. 8, 1756, as a colonel in the Pennsylvania militia, he led the Kittanning Expedition, which destroyed the village of Kittanning during the French and Indian War. He later served as a brigadier general in the Continental Army and as a delegate to the Continental Congress. He initially opposed Benjamin Rush’s plan to establish Dickinson College but served as a founding trustee.

¹⁵ Possibly a reference to *latitat*: “A writ which supposed the defendant to lie concealed and which summoned him to answer in the King’s Bench” (*OED*).

8

Notes for *Hugh Thompson v. Evan Morgan*, February 1759

Exactly why or when JD created these notes about the legal dispute between Hugh Thompson and Evan Morgan is uncertain. The case concerned Thompson's effort to collect a debt from Morgan, largely or entirely based on a £500 bond that Morgan had given, apparently connected to his promise to help Thompson if he married Morgan's daughter. In February 1757, Thompson won a judgment against Morgan from the New Castle County, Del., Chancery Court. Morgan, however, whose defense counsel included Benjamin Chew and John Moland, obtained a temporary injunction, arguing that his bond had been improperly obtained and that he had not been fully informed of its contents before signing. That case was tried in the New Castle Court of Common Pleas in May 1757, with the jury ruling for Thompson. The Chancery Court then dismissed the injunction and ordered that Morgan's suit be dismissed. In November 1757, the Court of Common Pleas ordered that land owned by Morgan be taken into execution by the sheriff to satisfy the debt, which by that time totaled £1,000.40.06. Sales were made, but not completed, and no deeds were issued until Thompson returned to court in 1759 to ask for a new order. At that time, the court directed the new sheriff to complete the sales, which was done. JD's notes below record the testimony in the May 1757 trial of Morgan's suit against Thompson. JD, who was in London until at least as late as February 1757, could have had nothing to do with the initial case; although it is possible that he could have returned to Delaware by May, it seems unlikely that he had any direct involvement with the trial.¹ Moreover, JD's docket, which identifies the case as *Thompson v. Morgan* and dates it, suggests that he created the notes—or at least reviewed them—on or after that date. It is thus possible that JD helped Thompson with the 1759 suit and copied the testimony from another source, adding the marginal citations and arguments, in preparation for any challenge to the 1759 suit. It is also possible that he made the notes at another time to prepare for a different case on a similar topic. This document is placed in accordance with JD's docket.²

Thompson ³	}	Tried in Febr[uar]y Term 1759 ⁵
v		
Morgan ⁴		

(1)

Evan Morgan— v Hugh Thompson and his Wife ⁶	}	Issue out of Chanc[ery] Whether a Bond for £500 from Pl[aintiff][s] [illegible] was fairly obtaind & the Obt[ain]or well acquainted with the contents of it.
---	---	--

1. A Father willing to reward one Child.
2. Afraid of discover[in]g it to ano[the]r Child.

The **Reason** like a [pro][per] Medium shews every thing clearly like &c.
 & Frame Work.

Marriage a valuable Cons[er]v[er]ation	If any Mistake in Evan M[organ]'s Calculation of his Est[ate] No fault of Ourself
---	---

9 Mod. 182. ⁷ Natural Consid[er]ation Obs[er]vati[on] This shews the Design [aft[erwar]ds? executed	Rob[er]t Carr's Depos[iti]on ⁸ <div style="text-align: right;">Evan M[organ] off[er]d</div> Hugh T[hompson] to give him a house & Shop if he wo[ul]d stay & marry his Daughter— & £30 to set him up: in 1756.
--	---

2 Children—equals == Gave over going to Philad[elphi]a == Lovd his D[aughte]r as well	<div style="text-align: center;">Bond dated in Febr[uar]y 1757.</div> Said his {e} {h}ad a Plant[at]ion worth £800 & he woud give half of <u>that & the Rest of his</u> <u>Est[ate]</u> let the Value be what it woud.
---	--

John McCarty. ⁹	Evan M[organ] was at my house—Hugh Th[ompson] {& George T[hompson]} came there & went to him— they askd Me to come in
----------------------------	--

A Piece of Eight given	I saw Evan M[organ] make his mark— I found fault with Geo[rge] Th[ompson]'s signing Evan M[organ]'s name— & Hugh
------------------------	--

John Dickinson Writings and Correspondence

Hugh Th[ompson]
opposd it after Ev[an]
Morg[an]'s Objection

Th[ompson] desird Me to sign it— Evan M[organ] objected & bid Geo[rge] Th[ompson] sign his mark— After th[at] when I went to sign as a Witness Hugh Th[ompson] opposd it— Evan M[organ] said it was for his Daughter's portion [*page break*]

Obs[ervati]on. Glad of
the Oppos[iti]on as
none of his
Neighb[ou]rs would
know of it.

George Th[ompson] Depos[iti]on Evan Morgan took 2 bonds out of his pocket {one of £500 ano[the]r of £30}—desird Depon[en]t to go to the door with him & took him up Stairs & told him to [*illegible*]{r}ead the 2 Bonds— bad[e?] Neighbours {at the Bridge}¹⁰ Depon[en]t askd about £500 Bond— E[van] M[organ] answe[r]d to give a [Por]tion &[c] w[ith]out lett[ing] his Wife or Son know it.

Bonds read thro[ugh] loud & distinct to Evan M[organ]

Evan Morgan was
sober.

Hugh Th[ompson] turnd the Bonds to John McCarty but Evan Morgan snatchd it away from him & said Geo[rge] Thompson shoud write his name.

==

W[illia]m Willson.¹¹ Was at McCartys when Evan M[organ] Hugh & Geo[rge] Thompson were there. these 3 went out together— then saw Evan M[organ] at the foot of the Stairs & Geo[rge] Th[ompson] with Papers in his hand. {Ev[an] M[organ]} Bid him farewell— wh[ich] I thought very odd—followd them Evan Morgan went in last & instantly the door was shut. Evan M[organ] was sober.

==

Obs[ervati]on. Think it
my Duty to oppose all

Barthia Millar.¹² Opposd her relating what the Wife said. The Court of Opinion th[at]

March 1759

Evid[ence] I think
illegal.

Barthia M[iller] shoud not say any thing of
what She heard Thompson others say.

AD (PHi-Logan)

¹ The only extant record from that period, the recollection of former slave Violet Brown notes that JD “staid ‘a good while’ with them after his return” from London. See Recollections of Violet Brown in the hand of Sarah (Sally) Norris Dickinson, PHi-Logan.

² For information about the case, see New Castle Co. Court of Common Pleas, Continuance Dockets, August 1757–November 1773, Roll No. 1, De-Ar; New Castle Co. Court of Common Pleas, Appearance Dockets, February 1758–November 1765, Roll No. 1, De-Ar; Deed to John Montgomery, May 21, 1760, Delaware Land Records, Roll No. 6, De-Ar.

³ Probably Hugh Thompson, a yeoman and gunsmith of White Clay Hundred and Christiana Hundred, New Castle Co., Del. In 1757 Thompson won a judgment against Morgan in the New Castle Court of Common Pleas for a debt of just over £1,000.

⁴ Evan Morgan, of White Clay Hundred, was a yeoman.

⁵ The dating of this document is based on JD’s docketing.

⁶ Thompson’s wife was named Margaret.

⁷ 9 *Modern* 180, 182, *Hiliard v. Phaly & al’.*, Trin. 9 Geo. 1 (1723): “Upon a trial at bar on an issue out of Chancery; the question was, Whether *Mr. Hiliard*, the plaintiff’s brother (who was seised in fee of the lands in question, of the yearly value of 600 *l.*) was married to *Sarah Phaly*, the mother and guardian of the defendant. . . . Then as to the proceedings in the spiritual court, admitting there had been a marriage in this case, and they had afterwards been divorced for consanguinity or affinity, such sentence of divorce would have been conclusive evidence to bastardise the children born in wedlock before the divorce; and what could be better evidence in a court of law to shew there was no marriage, than a sentence in the spiritual court carried on in a regular suit, and pronounced in the life-time of the parties, that they were guilty of fornication, and the proof of the commutation-money paid by the supposed father.”

⁸ Probably Robert Kerr (Carr; d. 1774), a Philadelphia mariner who purchased land from Hugh Thompson in 1761.

⁹ John McCarty (died c. 1766), of Christiana Bridge, White Clay Hundred, was a merchant.

¹⁰ Probably Christiana Bridge in White Clay Hundred.

¹¹ Probably William Wilson (d. 1778), a White Clay Hundred yeoman, or William Willson, of New Castle Hundred. In 1774, Willson purchased from Kerr’s estate the land that Kerr had bought from Thompson in 1761.

¹² Probably Beata Turner Miller (c. 1715–1778), wife of Alexander Miller (c. 1721–1776), a yeoman of Newport in Christiana Hundred.

9

Notes for *Samuel Ormes v. Shippen & Shippen*, March 1759

This case concerns an unpaid bill of exchange, a form of payment common among merchants such as the Shippen family. A bill of exchange is like a check drawn on a bank where the private merchant acts as the bank.¹ In this case, Richard Shackleton, the drawer, wrote a bill of exchange directing Joseph and William Shippen, the drawees,

to pay Dennis Shaw, the payee, a sum of money. Shaw then indorsed the bill to pay the sum to Samuel Ormes, JD's client, in the equivalent value of pig iron. The Shippens ultimately refused to pay the bill, leading Ormes to bring a suit of trespass to goods for which he sought damages, but whether Ormes received the justice he sought remains unclear.

Ormes Ind[or]see
v
Shippen & Shippen
[page break]

Philadelphia County ss.

March Term 1759

Joseph Shippen² late of Philad[elphi]a County Merchant & William Shippen³ late of the same County Merchant were attachd to answer Samuel Ormes Indorsee of Dennis Shaw of a Plea of Trespass on the Case &c And thereupon the said Samuel Ormes⁴ by John Dickinson his Attorney Complains that Whereas a certain Richard Shackleton the thirteenth day of April in the Year of our Lord One thousand seven hundred & fifty eight at Philad[elphi]a County af[ore]s[ai]d then & there being a person using Commerce according to the use & custom of Merchants made his certain Bill of Exchange in Writing with his proper hand subscribd bearing Date the same day & year af[ore]s[ai]d & the same Bill of Exchange to the said Joseph Shippen or William Shippen the said Joseph & William then & there {being Partners} jointly merchandizing did direct by which said Bill of Exchange the said Richard Shackleton did require the said Joseph & William to pay to the said Dennis Shaw or Order the Sum of Thirty pounds two Shillings & seven pence three farthings Value receivd And the said Dennis Shaw afterwards to wit the Tenth day of August in the Year af[ore]s[ai]d by his Indorsement on the same Bill of Exchange according to the use & custom of Merchants made did order the Contents of the said Bill to wit the said Thirty pounds two shillings & seven pence three farthings to be paid to the said Samuel Ormes or his order for Value receivd And the said Samuel in fact saith that afterwards to wit the Twenty [blank] day of August in the Year af[ore]s[ai]d at the County af[ore]s[ai]d he did shew to the said Joseph Shippen the Bill af[ore]s[ai]d with the Indorsement af[ore]s[ai]d thereon made & did then & there [page break] require the said Joseph to accept the said Bill Upon which the said Joseph then & there {on

behalf of himself & the said William} accepted the said Bill of Exchange of the said Richard Shackleton to the said Joseph & William as af[ore]s[ai]d directed upon condition to pay the said Bill to the said Samuel Ormes by {delivering to the said Samuel} as many Tons of Pig Iron⁵ as would pay the said sum of Thirty pounds two shillings & seven pence three farthings to which the said Samuel then & there agreed And thereupon the said Joseph {& William} in Consideration thereof upon {t}h{e}mself{ves} & ~~the said William~~ did assume & to the said Samuel did then & there faithfully promise that they the said Joseph & William the af[ore]s[ai]d Thirty pounds two shillings & seven pence three farthings in the af[ore]s[ai]d Bill of Exchange⁶ mentiond to the said Samuel would pay by delivering {to the said Samuel Ormes} as ma{n}y Tons of Pig Iron as would pay the same And the said Samuel further saith that the said Joseph & William at the time of the Acceptance af[ore]s[ai]d of the said Bill & of the promise & Assumption af[ore]s[ai]d were Partners jointly merchandizing at the County af[ore]s[ai]d & that the said Bill was made & drawn on account of the said Partnership & not on the Account of the said Joseph or of the said William separately {And Whereas the said Richard Ø} [*on facing page:*] {Ø And Whereas the said Richard Shackleton afterwards to wit the same day & Year first af[ore]s[ai]d at the County af[ore]s[ai]d then & there being a person using Commerce according to the Use & Custom of Merchants made his certain other Bill of Exchange in Writing with his proper hand subscribd bearing Date the same Day & Year & the same Bill of Exchange to the said Joseph Shippen or William Shippen the said Joseph & William then & there being Partners jointly merchandizing did direct by wh[ic]h said Bill of Exchange the said Richard Shackleton did require the said Joseph & William to pay to the said Dennis Shaw or order ~~the~~ {another} sum of Thirty Pounds two shillings & seven pence three farthings Value receivd And the said Dennis Shaw afterwards to wit the tenth day of August in the Year first af[ore]s[ai]d {at the County af[ore]s[ai]d} by his Indorsement on the said Bill of Exchange according to the use and Custom of Merchants made did order the Contents of the said Bill to wit the said Thirty Pounds two shillings & seven pence three farthings to be paid to the said Samuel Ormes or his order for Value receivd And the said Samuel in fact saith that afterwards to wit the Twenty [*blank*] day of August in the Year af[ore]s[ai]d {at the County af[ore]s[ai]d} he did shew to the said Joseph & William the Bill af[ore]s[ai]d with the Indorsement af[ore]s[ai]d thereon made & did then & there require the said Joseph & William to accept the said Bill Upon which the said

Joseph & William then & there being Partners as af[ore]s[ai]d then & there accepted the said Bill of Exchange of the said Richard Shackleton to them as af[ore]s[ai]d directed upon condition to pay the said Bill to the said Samuel Ormes [*page break*] by delivering {to the said Samuel} as many {other} Tons of Pig-Iron as woud pay the said sum of Thirty Pounds two shillings & seven pence three farthings to which the said Samuel then & there agreed And thereupon the said Joseph & William in Consideration thereof upon themselves did assume & to the said Samuel did then & there faithfully promise that they the said Joseph & William the af[ore]s[ai]d Thirty Pounds two shillings & seven pence three farthings in the Bill of Exchange last af[ore]s[ai]d mentiond woud pay to the said Samuel Ormes by delivering to the said Samuel as many Tons of Pig-Iron as woud Pay the same **Nevertheless** &c} **Nevertheless** the said Joseph & William the {ir} promises & Assumptions af[ore]s[ai]d not regarding but designing & fraudulently intending the said Samuel in this behalf craftily & subtilly to deceive have not {nor hath either of them} paid the said Thirty pounds two shillings & seven pence three farthings to the said Samuel {on the said first Bill of Exchange} n{N}or deliverd as many Tons of Pig Iron to the said Samuel as woud pay the said {first mentioned} Sum of Thirty pounds two shillings & seven pence three farthings Nor {have the said Joseph & William or either of them paid the said other Thirty [*illegible*] θ } [*in left margin:*] { θ pounds two shillings & seven pence three farthings on the said other [*illegible*] bill of Exchange nor deliverd as many other Tons of Pig-Iron to the said Samuel as woud pay the said other sum of Thirty pounds two shillings & seven pence $\frac{3}{4}$ Altho[ugh] &c} Altho[ugh] to do this the said Joseph & William afterwards to wit the First day of September in the Year af[ore]s[ai]d at the County af[ore]s[ai]d by the said Samuel were requested but the said Thirty pounds two Shillings [*page break*] and seven pence three farthings {on the said first Bill of Exchange} to the said Samuel to pay or as many Tons of Pig Iron as woud pay the same to the said Samuel to deliver {or the said other Sum of Thirty pounds two* [*vertically in left margin:*] {shillings & seven pence three farthings on the said other Bill of Exchange to the said Samuel to pay or as many other Tons of Pig-Iron [t θ ?]}{as} woud pay the same to the said Samuel to deliver} have hitherto altogether refusd & still do refuse Whereupon the said Samuel saith he is worse & hath Damage to the Value of Sixty Pounds & therefore he brings this Suit &c

August 1759

Pleges of pros[ecution] John Doe
&
Richard Roe

Dickinson
for the Plaintiff

ADS (PHi-Logan)

¹ Alvin Rabushka, *Taxation in Colonial America* (Princeton, N.J.: Princeton University Press, 2010), 161.

² Joseph Shippen II (1706–1793) co-owned the ship *Charming Catherine* with his brother, Edward Shippen III (1703–1781). Hailing from a prominent mercantile family, they traded with Antigua, St. Kitts, and Britain. By November 1752, Joseph II had settled in Germantown, Pa., having retired from commercial activities.

³ William Shippen II (1712–1801) was an apothecary and one of the first physicians at the Pennsylvania Hospital. It is unclear why he is listed as a merchant here. It is possible he was confused with Joseph's older brother and partner Edward III, who was also known as Edward of Lancaster.

⁴ Possibly Samuel Ormes (c. 1714–1767), an apothecary.

⁵ Pig iron: "Cast iron as first obtained from a smelting furnace, in the form of oblong blocks" (*OED*).

⁶ Bill of exchange: "A written order by the writer or 'drawer' to the 'drawee' (the person to whom it is addressed) to pay a certain sum on a given date to the 'drawer' or to a third person named in the bill, known as the 'payee'" (*OED*).

10

Proposed Order of the Court in *Paxton v. Van Dyke*, August 25, 1759

In Equity.

The 25th day of August in the Year of our Lord One Thousand seven hundred & fifty nine & in the thirty second {third} Year of his Majesty King George the Second.
Between (here insert the title of the Cause)

This Cause coming Yesterday to be heard before the Judges of his Majesty's court of Chancery for the County of New Castle on Delaware & being then debated by Counsel on both sides & all the matters in the Pleadings being by the said Court considered * [*vertically in left margin:*] { * The substance of the Complainants Bill appeared to be for the Redemption of the premisses therein mentioend Whereto the Counsel for the Defendant answerd & insisted that the Defendant had been so long in possession thereof that the Complainants ought not to be allowd to redeem } ¶ {W} hereupon {& on debate of the whole matter} this Court doth think fit and so order & decree; and accordingly it is orderd adjudgd & decreed that {the Complainants may redeem the premisses in their Bill mentioend and that} the

Defendant in this Cause shall deliver up to the ~~illegible~~ att[orne]y ~~illegible~~ of the {said} Complain[an]ts the Land & Tenements ~~illegible~~ Premises in their Bill mentiond which they by their said Bill prayd that they might be allowd to redeem {Upon the said Compl[ainant] complying with such Terms as this Court shall hereafter [order & direct?]} And ~~that~~ this Court nominates constitutes & appoints Jacob Vanbebber David Weatherspoon & John Jones Esq^{rs}1 Masters in Chancery² to inquire & make report to this Court at next February Term what Sum or Sums of Money the defendant or Francis Land advanced to William Paxton in the Said Bill namd {& at what time & what Interest is due thereon} and what is the true Value of the Buildings & Improvements erected & made by the said Defendant And also what has been the yearly Value of the Premises in the Bill [page break] mentiond [receivd] by the said Francis Land or the Defendant

But for as much as this Court cannot settle the Terms of the Redemption by the said Complainants until the Report to be made as aff[ore]s[ai]d It is orderd by this Court that all things shall stand as they now are till next Term [when] {and} this Court will make {reserves to itself} such further Direction as to them on the said Return shall seem proper—

[on outside of folded page:]

On a Redemption being decreed the Chanc[ery] allowd only necessary Repairs & last[in]g Impr[ovemen]ts to the def[endan]t tho[ugh] he could not bring a Bill for Redemption— After 20 Years poss[essi]on & great Im[pro]vements. 1 Vern. 139³

==

The [pro]fits were set ag[ain]st the Interest in an old Mortgage. 25 June 1715. Bail alias Basil & Acheson. 2 Ab. Ca. in Eq. 618.⁴

==

Where a M[ortga]gee manages the Estate himself—nothing is to be allowd him for his Care & Pains—Otherwise if he employs a Bailiff. 1 Vern. 316.⁵

==

Int[eres]t to cease from the Tender of Princ[ipal] Int[eres]t & Costs. 1 Ab. Ca. in Eq. 329. 2 Vern. 401.⁶

AD (PHi-Logan)

¹ Jacob Van Bebber (1706–1768), of New Castle Co., Del., was appointed second justice of the Delaware Supreme Court in 1764. Previously, he served as justice of the

peace and New Castle Co. judge. David Witherspoon (c. 1705–1763), originally of Co. Londonderry, Ireland, was the proprietor of the Witherspoon Inn on King’s Road in Middleton, Del. In 1762 he was elected to represent New Castle Co. in the legislature. John Jones (d. 1780), of New Castle Co., was a justice of the peace and of the Court of Common Pleas. In 1776 he was elected to the Assembly, but he resigned in 1777 to become chief justice of the New Castle Co. Court of Common Pleas.

² In the Court of Chancery, the masters of chancery are assigned by the chancellor, the chief officer of the court. They adjudicate cases and ensure that the court manages its cases in a timely manner.

³ 1 Vernon 139, *Exton v. Greaves*, Hill., C.C. (1682): “But the *Lord Keeper* decreed a Redemption; because these Lands by the new Agreement became a Mortgage in respect of the other Creditors in the Hands of the Defendant, and in regard of the Trust and Confidence which they had in the Defendant, being all Creditors alike: And principally because the Mortgagee had assigned to *Greaves* his Mortgage only, and not the benefit of the Decree for foreclosing of the Redemption: And directed an Account to be taken, and the Defendant to be allowed only necessary Repairs and lasting Improvements.”

⁴ For 2 Bacon, *Cases* 618, see doc. 2:3, n. 14, above.

⁵ 1 Vernon 316, *Bonithon v. Hockmore*, Pasch., C.C. (1685): “In an Account before the Master, the Plaintiff who had married the Defendant’s Mother, and had a Debt upon the Estate, was allowed by the Master great annual Sums of Mony for his Care and Pains in managing of the Estate. *Per Cur’*. Where a Mortgagee or Trustee manage the Estate themselves, there is no Allowance to be made them for their Care and Pains; but if they employ a skillful Bayliff, and give him 20 *l. per Ann.* that must be allowed, for a Man is not bound to be his own Bayliff.”

⁶ 1 Bacon, *Cases* 329: “1. If the Mortgagee assigns his Mortgage, and the Mortgagor comes to redeem against the Assignee, all Monies really paid by the Assignee, either as Principal or Interest, shall be Principal to the Assignee, and shall bear Interest; otherwise it is if the Assignee had not paid the Money; and the Assignment was only colourable, in order to load the Mortgagor with compound Interest.”

2 Vernon 401, *Amhurst v. Dawling*, Mich., C.C. (1700): “The Defendant having mortgaged the Manor of *Thundersley*, to which an Advowson was appendant, to the Plaintiff, who brought the Bill to foreclose, the Church became void; the Defendant moved the Court for an Injunction to stay the Proceedings in a *Quare impedit* [Lat. wherefore he hindered] brought by the Plaintiff. *Per Cur.* Although the Defendant *Dawling* hath no Bill, yet being ready and offering to pay the Principal, Interest and Costs, if the Plaintiff will not accept his Money, Interest shall cease, and an Injunction to stay Proceedings in the *Quare impedit* [Lat. wherefore he hinders].”

11

Election Returns for Kent County, Delaware, [c. October 1–11, 1759]

JD and at least sixteen other men stood for election to the Three Lower Counties legislature for Kent County, Del., in the fall of 1759. The election, which took place annually on October 1, was held at the Dover court house. Over 5,000 votes were cast by at least 901 people, all of whom had to be at least twenty-one years old and were “natural-

born” Britons or were naturalized in England, Delaware, or Pennsylvania. A voter must also be a freeholder with at least fifty acres of land, twelve of which had to be “cleared and improved.” Alternatively, a voter could possess “*Forty Pounds* lawful Money of this Government clear Estate, and have been resident therein for the Space of two Years.” All eligible voters were required to attend and vote in the election by writing or verbally declaring “the Names of those Persons for whom they vote,” after which all votes were deposited “in a Box.” Appointed clerks then tabulated the votes and announced the victors. If voters were healthy and otherwise able but did not vote, they were fined twenty shillings, and if voters were bribed or bribed another voter, they were fined £5.¹ However, electoral irregularities occurred. In this Kent County election, it appears that at least forty-seven ineligible votes were cast, but despite these issues, the first six people listed were elected, including JD to his first public position. The dating of this document, which is not in JD’s hand, is based on the election date and when the results were announced (see doc. 2:12, below).

A List of Polls the Several
Gentlemen had that was voted for
at the Dover Election octo[be]r 1st 1759

John Brinkle Esq ^{r2}	651
Joseph Caldwell ³	611
Vincent Lockerman	575
James Train ⁴	533
John Dickenson	501
John Caten ⁵	393
John Vining ⁶	388
Benjamin Chew ⁷	343
Timothy Hanson ⁸	340
John Barns ⁹	329
Cæsar Rodney ¹⁰	294
Thomas Clark ¹¹	32{3}5
Andrew Caldwell ¹²	66
C[torn]t [torn]	41
[torn]	[torn]2
R[obe]rt [torn]yday ¹³	9
W R	2
	<hr/> 6{5}409

October 1759

Number of voters as [per] the lists Kept	
Duckcreek Hundred	140
Dover Hundred	59
motherkill Hundred	334
muspillion Hundred	194
Little Creek Hundred the	} 127
Shereff ¹⁴ refuses to Shew but	
Says it Contains 127	
	854

6{5}409 polls Divided by 6 Gives the number of tickets Red out of the Box as for Example

$$6 / \{5\}409 / [10]68 / 901$$

$$\begin{array}{r} \underline{54} \\ 0[4]0 \\ [0]9 \\ \hline [49] \\ [48] \\ \hline 1 \end{array}$$

$$6 / 5409 / 901$$

$$\begin{array}{r} \underline{54} \\ 09 \\ \underline{6} \\ 3 \end{array}$$

number of tickets Red } 1068
out of the Box } {901}

Number of Voters as } 854
[per] the Lists } 214{047}

[torn] 6 [torn]
the [nu]mb[er of tickets] Red more the[n] [torn] names on the List of [v]oters taking the Shereffs word for Little Creek (in the year 1758) there appears to be but 104 on the Little Creek list

it is well Known that their is many Scattered votes taken no notice of by the Clarks which would make a greater Diference if they were {had been} Kept

it is noted that their is a far Greater number of votes this year then Ever has been before C~~ounte~~d occasioned by the Inspectors Taking a

great many votes that had no Right by Law as appears by the Several Lists—¹⁵

AD (De-Ar)

¹ *LGD* (1752), 118, 119, 120–21.

² Dr. John Brinckle (d. 1764), of Jones Neck, Del., was JD's neighbor and an officer in the militia. He represented Kent Co. in the Delaware Assembly from 1746 to 1748 and from 1752 to 1763. He was also a trustee of the Kent Co. Loan Office.

³ Joseph Caldwell (d. 1763) represented Kent Co. in the Assembly from 1758 until 1760.

⁴ James Train (died c. 1764) represented Kent Co. in the Assembly from 1749 to 1751, in 1755, and from 1759 to 1761. Joseph Caldwell and Timothy Hanson were his brothers-in-law.

⁵ John Caten (d. 1769) was a captain in the Kent Co. militia and served many terms in the Assembly.

⁶ John Vining (1724–1770) had represented Kent Co. in the preceding Assembly. He later became speaker, and he served as chief justice of the Lower Counties from 1764 until his death.

⁷ For Benjamin Chew, see doc. 2:3, n. 17, above.

⁸ Timothy Hanson (d. 1762), a Quaker with large landholdings in Little Creek Hundred, represented Kent Co. in the 1760 Assembly.

⁹ John Barns (d. 1767), a militia captain, represented Kent Co. in the Assembly from 1761 through 1765.

¹⁰ Cæsar Rodney (1728–1784), of Dover, Del., had represented Kent Co. in the preceding Assembly, and he represented Kent in almost every Assembly from 1761 through 1775, serving several times as speaker.

¹¹ Thomas Clarke (d. 1763) had represented Kent Co. in the Assembly from 1754 through 1757 and would again in 1761 and 1762.

¹² Andrew Caldwell (died c. 1774) was Joseph Caldwell's uncle and a large landowner with holdings in Dover and Murderkill Hundreds, Del. He represented Kent Co. in the Assembly in the 1740s and early 1750s.

¹³ Perhaps Robert Holliday (c. 1730–1809), of Duck Creek Hundred, Del., who represented Kent Co. in the Assembly in 1774.

¹⁴ Thomas Parke and William Rhodes (died c. 1781) were Kent Co. sheriffs.

¹⁵ For the election law, see "An Act for Regulating Elections, and Ascertainning the Number of the Members of Assembly," (1733), *LGD* (1752), 118–27.

12

Election Announcement: Representative to the Assembly of the Three Lower Counties from Kent County, *The Pennsylvania Gazette*, October 11, 1759

On October 1, 1759, JD was elected to his first public position (see doc. 2:11, above). In the following year, he assumed the speakership of the House (see doc. 2:25, below), a position he held for a year. During his short tenure in the Delaware Assembly, he seems to have made political enemies, as indicated in his October 1, 1762, letter to George Read (doc. 2:53, below).

¹ For Vincent Loockerman, Sr., see doc. 2:1, n. 18, and for Dr. John Brinkle, Joseph Caldwell, James Train, and John Caten, see doc. 2:11, nn. 2–5, all above.

² JD added an internal address to this document: “To the Trustees of the Loan-Office for Kent County.”

³ Jacob Kollock (1692–1772), an Anglican of Sussex Co., Del., served in the Assembly for over forty years.

14

From David Finney, November 23, 1759

In a will dated January 23, 1712, David Finney’s maternal grandfather, Robert French, bequeathed most of his land to his son (and Finney’s uncle) David French “& his heirs for Ever.” This included an 1,800-acre tract called the Partnership, “more Commonly the Mill Neck,” on the south side of the main Duck Creek. Robert French specified alternative arrangements should David die “unmarried without Issue Lawfully begotten or otherwise before the age of Twenty one Years of age or afterwards having no Lawf[ul] Issue Living at the time of his death.” In that case, the Partnership was to descend equally to David French’s sisters, Mary and Elizabeth.¹ David French indeed died without issue, and in 1742 the Partnership descended to Mary French Gardner, wife of James Gardner, and the heirs of Elizabeth French Finney (1693–1740), David Finney’s mother. Finney and the Gardners partitioned the property in December 1758, and Finney acted at the November 1759 term of the Kent County Court of Common Pleas to end the estate tail on his portion of the property. In 1764 Finney sold 979 acres of the Partnership, all that he then owned, to JD.²

New Castle Nov[embe]r 23:^d 1759—

Sir,³

Please give me your Opinion. Whether my Uncle David French⁴ by the Will of my Grandfather Robert French had a right to lease the Partnership (Devised to him with divers remainders over in Case of his death without Issue) for the Term of Ninety Nine Years, & what Estate you are of opinion my Uncle had in the Tract of Land called the Partnership

I am Sir Y[ou]r most H[um]ble Serv[an]t
David Finney⁵

ALS (De-Ar)

¹ New Castle Co., Del., Wills, Book C, De-Ar.

December 1759

² Delaware Land Records, Roll No. 781, De-Ar.

³ David Finney (1725–1806) was a New Castle Co. lawyer.

⁴ David French (1700–1742) was prothonotary for New Castle Co. He had previously served as the county’s attorney general and speaker of the Delaware Assembly.

⁵ Finney added an internal address to this letter: “To John Dickinson Esq^r.”

15

To David Finney, November 23, 1759

Sir,

I am clearly of Opinion that your Uncle David French by the Devise abovementioned, had only an Estate {Tail} in the Tract calld the Partnership; And that he had no Right to Lease for the Term of Ninety nine Years—

I am
Your very h[um]ble Serv[an]t
John Dickinson¹
New Castle Nov[embe]r 23.^d 1759

ALS (De-Ar)

¹ JD’s response was composed directly underneath Finney’s letter of the same date, doc. 2:14, above.

16

“A Song,” December 1759

A Song.

Come answer ye Shepherds, Ye learned in Love,
Who know both its Pleasure and Pain;
From what you’ve experienced let others improve,
And Wisdom, from your Wisdom gain.

When Glyci¹ is present, I wish the fair Maid²
Each Action and Word may approve;
Yet striving to please, by my Fears am betrayd:
Pray tell Me, if this is to love?

Tho[ugh] absent—in thought still her Beauties arise,
Nor can I the Image remove;
I still hear her Voice, and I still see her Eyes:

John Dickinson Writings and Correspondence

Pray tell Me, if this is to love?

December's sad Season, if She is but near,
Is chearful as May's verdant Grove;
Her Charms can enliven the Gloom of the Year:
Pray tell Me, if this is to love?

When She meets Me with Smiles, Joy thrills thro[ugh] my Breast
In Hope's happy Errors I rove;
[*illegible line*] Too soon, by cold Looks the short Transport's supprest:
Pray tell Me, if this is to love?

Thus changing alternate to Grief and to Ease,
Now blest, and now wretched I prove;
Tis Death to displease her, but Heaven to please:
Pray tell Me, if this is to love?

D.
December 1759

ADS (PHi-Loudoun)

¹ From the biblical Greek word *glykys* (γλυκύς), meaning *sweet*.

² The identity of the subject of "A Song" remains unknown.

17

Notes for *Lessee of Daniel Weston and Mary Weston v. Thomas Stammers and John Paul, [1759]*

This case is one of several in the Pennsylvania courts between many of the same litigants concerning the title to a parcel of land bequeathed in a will. Little is known about the cases, despite one of them being the third entry in the first volume of Alexander J. Dallas's four-volume *Reports of Cases Rules and Adjudged in the Courts of Pennsylvania*, which was published between 1790 and 1807 and are now commonly known as the first volumes of the *United States Reports*. All the cases seemed to have turned on what sort of evidence could be admissible to determine the title to the property. JD's notes appear to be the only extant record of the cases, complementing the material in the Pennsylvania Appearance and Continuance Docket and Dallas's *Reports*.

The first of the cases between Mary and Daniel Weston and Thomas Stammers appeared before the Pennsylvania Supreme Court in 1756 with Benjamin Chew for the plaintiff and John Moland for the

defense, when JD was at the Middle Temple.¹ Instead, Joseph Galloway appeared with Moland. The earliest JD could have worked on the case was after he returned from London in 1757. It is possible JD inherited the case when Moland died in late 1760.

The case of *The Lessee of Lewis and Mary Weston v. Thomas Stammers and John Paul* came before the Court in 1759 during the April term, and it is the case that provides this document's conjectural dating. Dallas reports that the Court made two decisions: first, it allowed the Westons' evidence to be admissible, namely, "[a]n Exemplification of a Will, made in *England*, and certified *generally* to have been proved, approved and registered, in the Year 1704"; and minutes of the commissioners of property. But, second, the Court disallowed as evidence depositions from an earlier case because they had not been read as evidence in that case.²

Now before the Pennsylvania Supreme Court, JD, presumably representing the Westons, faced similar issues as in the 1759 case, namely, what evidence concerning pedigree and land deeds would be admissible. For example, would the "pedigree exception," which allowed "hearsay evidence, rendering admissible in court such evidence with regard to a person's family relationships," apply?³ Perhaps most significantly, JD's case preparation centered around adapting English common law to colonial American circumstances.

L[ess]ee of Daniel Weston⁴
& Mary Weston
v
Stammers & Paul—⁵ } In The Supreme Court.

First Question. Whether Certificates from L[or]d Mayor of London sufficient to [pro]ve a Pedigree?⁶

Evidence in legal Sense means "those [Pro]ofs admitted in C[our]ts for the Disc[over]y of Truth, & Distrib[uti]on of Justice."

Circumstances of things have changed in Engl[an]d & the Law has changd with them. At Comm[on] Law—Lawf[ul]ly married or not—while the power of Clergy in its height—coud only be tried by Bishop's Certif[icate] afterw[ar]ds alterd.⁷

==

So "while no Trade but th[at] of Religion carried on—The Evid[ence] of Infidels disallowd[""]⁸

But in *Barker v Omychund* 2 Ab. Ca. in Eq. 397. Infidels Oath allowed.⁹

==

If Strictness of Com[mon] Law wo[ul]d reject this Evid[ence] Yet strongest Reason why those Rules shoud not be severely observd now as they co[ul]d not possibly be calculated for **Colonies** wh[ich] did not then exist Wh[ich] Circumst[ance] intro[duces] a diff[icul]ty unknown to the Com[mon] Law in Point of Evid[ence] from the great Distance—

But shall shew th[at] by the [Pra][c]tize of C[our]ts at home this Certif[icate] is Evid[ence]

Many Rules relating to Evid[ence] As th[at] a [Par]ty inter[este]d cant be a Witn[ess] & that the best Evid[ence] th[at] can be had must be [pro]duc'd—*illegible* {nor infamous [Per]sons} but remarkable th[at] no one Rule—but has so many Exceptions th[at] scarce one of them is ever strictly observd— Such a Variety of Circumst[ances] in Transaction th[at] these Rules wo[ul]d destroy Justice {by reject[in]g wh[at] might be confirmd by Jury's knowl[edge]} And no Inj[ur]y in mitigating them as the Evid[ence] not absolute but left to the Discretion of a Jury &c

The Rule now insisted on is th[at] the best Evid[ence] (theref[ore] not regard the Except[ions] to the 2 others)

Even in the severest Sense of th[at] Rule Gilb. 16¹⁰—We have a Right &c Explain [&c]

No higher Evid[ence] in our Power The ~~Transaction~~ {Fact} in England Reput[at]ion not better Testimony If it was—how does it appear We could [pro]ve it? When a man [pro]duces a Copy—it is manifest there has been an Orig[ina]l but We not to lose the Evid[ence] We have on a Sugg[est]ion of what We could not have— But if We were [notions] the Sense

The Reasons why the Judges soften the Rig[idnes]s of Rules are {1.} Diff[icul]ty of obtain[in]g Evid[ence] & {2.} Nature of the thing to be [pro]vd As to the First as where a [Per]son is beyond Sea—A Certif[icate] from Bourdeaux allowed. 2. Roll. Ab. 583. CL. 74.a.¹¹

{*}An Agreem[en]t attested by a Notary Publick in Holl[an]d Evid[ence] 9 Mod. 322. 2 Roll. Rep. 346. Cro. Ja. 542.¹² 2^{ly} The Nature of the th[ing] to be [pro]vd As where there is no method establ[is]h'd for preserv[in]g the Evid[ence] of Facts—

Pedigrees of this kind—

The old Custom of Inquis[iti]ons post mortem¹³ now left off

No legal manner instituted & unless Accidental Discov[er]ie]s are admitted—none can—Living Evid[ence] it is impossible to have but for an Age— After th[at] it degenerates into Hearsay—& Any Written Acco[un]ts are only voluntary—void of Authority [page break] Where it is impossible then th[at] Evid[ence] can be strictly legal—Judges must depart from Summum Jus¹⁴—or be g[ui]lty of Injustice. Therefore Heralds books¹⁵ Evid[ence] of a Pedigree. Sal. 281. 1 Strange 162.¹⁶ So Birth of a Child entered by a Father in an Almanack. J Raym. 84.¹⁷ So a Copy of an Inscription on a Grave Stone. Lill. Pract Regt. 1 Vol. 744.¹⁸ So Church books good Evid[ence] of Birth. Moor 451. Cro El. 411.¹⁹ {Recital in a Deed is good Evid[ence] of a Pedigree. Carth. 79.}²⁰

So far have C[our]ts gone on these 2 Reasons—both wh[ic]h Diff[ic]ul]ty & Nature of the thing to be [pro]vd are united in our Cause—

The facts happ[ene]d in Engl[an]d The Trial here— The Witn[esse]s cannot come— This very Evid[ence] Who has sworn might have made a Reputation by speaking The facts impossible to [pro]ve legally

Obj[ecti]on Cross Exam[inati]on. {—Answ[er]—} Th[is] Obj[ecti]on as strong in the Cases cited. Besides if We are mistaken—there is the same Way open to [pro]ve the Pedigree diff[er]ent from our [Pro]of But the Simplicity of the facts renders Cross Exam[inati]ons **useless**— It is not like Depositions sett[ing] forth long & complex Transactions— We see in Scripture noth[ing] can be plainer th[an] A Geneology “Abrah[am] begot Isaac & Isaac &c[.]”²¹
~~Besides in tak[ing] Depos[iti]ons in Chancery (& this Court in some measure is a Chancery) [illegible words]~~

The Evid[ence] now offerd is not uncommon. But of the same Nature with such as is daily allowd— The Recital of the 5 G. 2.²² is not so absurd— If Consid[er]ed th[at] by that Stat[ute] Lands in the Plant[at]ions are made liable to pay Debts— If upon such Evid[ence] as the [pre]sent those Lands may be seizd & taken in Ex[ecuti]on for surely it is not unreasonable th[at] the same Evid[ence] shoud shew a Title to Lands as serves to take Lands from those Who have an undoubted Title.

Besides by Our Laws pa. 99. 148.²³ Powers of Att[orne]y & Deeds [pro]vd in this manner are suff[icien]t to convey a Title Et ubi eadem Ratio ibi idem Jus.²⁴

Tho[ugh] Deeds are the very Substance of the Title & A Pedigree only Collateral Matter— This Construction freq[uent]ly made on Stat[ute]s CL. 154. a. 365. b. 2 Ins. 256. 322. 393.²⁵ So the [Pro]vision of 23 H. 8²⁶ th[at] an Obl[igat]ee &c shall have equal Benefit [with] Stat[ute] staple gives him all the Adv[antage]s added to Stat[ute] Staple by 32 H. 8.²⁷ CLitt. 291. a.²⁸

Wh[ich] is very strong as in the 2^d Stat[ute] he seems [pur]posely omitted. [page break]

Second Point. Whether A Copy of a Record made up at large [pro]ved be the hand of Lloyd the Att[orne]y³¹ & Heath his Clerk³² can be read to shew Hart & Benthall's Recovery³³ the Libri & Execution thereon?

Infancy of the Country Ignorance & Irregularity

Records cant be expected here as [per]fect as in Westm[inste]r Hall No more than such a Building

{One Instance Docquett Book no Evid[ence] of Record at home & yet all our Evid[ence] Law of Ev. 89.}³⁴

Time injures everything
=
Ant[ien]t transactions like Deeds to be tenderly handled— The greatest Works of Man vanish with time.
X Matters of fact [pro]p[er]ly belong to Juries— The Law remarkably altered in 10 Co. Layfield's Case²⁹ in this [par]ticular—as to Razures³⁰ & Interlineations. And the Judges Opin[ion] not

But these Judges rather to leave doubtful Matters to the Country than to deprive a man of his just Right by reject[in]g his Evidence. {X} Whatever Liberties have been allowd at home much more allowable here.

Where a Trans[acti]on is Antient there must be a Diff[icu]lty in [Pro]of And theref[ore] where no sign of Fraud

{ Many th[ing]s adm[itte]d th[at] in modern Transactions wo[ul]d be rejected.

Valeat quantum valere potest³⁵

==

Strange 826. Strange 575—³⁶ An old Rule altered for this Reason.

absolute—still left to the Judgmen]t & Discretion of the Jury—th[at] is their Country.

Obj[ecti]on

Thus the Rule th[at] no Survey is Evid[ence] but taken with [pri]vity of both [Par]ties rejected & an Old Map coming with Deeds &c admitted. Gilb. 78. 79. So Law of Ev. 101.³⁷ Of a Deed. An Antient Deed Evid[ence] w[ith]out [Pro]of or Seal. 1 Keb. 877. 3 Sal. 153. 1 Lev. 25. 1 Lill. 743.³⁸ Nay so far has this [Pri]nciple been carried in fav[ou]r of Ant[ie]nt Deeds found in unsuspected places th[at] a Counterp[ar]t w[ith]out Witn[esse]s admitted in Evid[ence] 1 Sal. 153. 1 Lev. 25.³⁹

This is a Record & ought to be [pro]vd by Off[icial] Copies or sworn Copies— Answ[er]
So modern Records ought— And an equally strong Rule that Deeds shoud be shewn But in 1000 Instances Copies will do

Rolls never made up till the Cause finishd—

==

This Record agrees with Docquett & all the other Records— Like Antient Ruins &c

Some Circumst[ance]s do cert[ain]ly induce the Judges to depart from the strict Rules of Law— Only Q[ues]tion if these Circumst[ance]s suff[icien]t

==

Now give Inst[ance]s of Judgmen]ts relat[ing] to Records. A Scrivener's book allowd in Ejectm[en]t to [pro]ve a Cons[iderati]on paid. Comb. 249.⁴⁰ A Copy of a short Note allowd by Hale tho[ugh] no Judgmen]t enterd. Comb. 337.⁴¹ An Entry in an Att[orne]y's Book read after his death to [pro]ve a Surrender. 2 Strange 1129.⁴²

Rolls when filed.

Nay Records may be [pro]vd by Testimony. Tri[al] [per Pais]⁴³ 369. 375. Ven[t]. 257. Sal. 284.⁴⁴ [page break]

{Rules of Evid[ence] are **artificial Rules**—wh[ic]h are to be departed from to observe the Eternal & immutable Rule of Justice.}

Third Point.

If Minutes of [Pro]p[er]ty⁴⁷ & Yocum's⁴⁸ Poss[essi]on with Conv[er]sion &c suff[icien]t [Pro]of of Exch[ange] with Jonas⁴⁹ [illegible]

Exchange need not be by Deed. C. Litt. 50. b.⁵⁰
==
{^X}Secretarys Off[ice] the very fountain of Our
Titles—& th[at] wh[ich] gives can surely [pro]ve
==
X Surely these Papers of as much Note as
[Pro]ceed[in]gs of Copy hold Manors⁴⁵—
wh[ich] are not Records.
2. Strange 955.⁴⁶
The Minutes found there in Impartial hands— 2
Strange 1129: {Gilb. 78.} Comb. 249.⁵¹
==
Counterp[ar]t of a Deed given in Evid[ence] only
because part of the Land had been sold under the
Title. Prec[edent?] in Chanc. 118.⁵² So here Yocum
actually conveyd to Us under the Exch[ange] for us
no other Title appears— And Why shoud We
[pur]chase from him after A Patent Unless We knew
he had the Antient York Right.⁵³

What was said by Yocum's Wife⁵⁴ suff[icien]t to [pro]ve the Exchange
{there being no Disp[ute] then}. Raym. 2 Strange. 826.⁵⁵
Endorsement by Ob[li]g[at]ee himself suff[icien]t to [pro]ve
Paym[en]t of Interest. 1 Strange 575. Being remotely interested does
not [pre]vent a man being a Witness. 1 Strange 504.⁵⁶

What said by Wife Evid[ence] ag[ains]t Husb[an]d Skin. 647⁵⁷
So Hearsay is Evid[ence] 2 Ab. Ca. in Eq. 406. 410.⁵⁸

Fourth Point. Whether Crispin⁶⁰ to be regarded as a Trustee to
Saunders⁶¹ in the [Pur]chase from Yocum—as
Yocum's Deed is subseq[uen]t to Crispin's to
Saunders.

Contrary to the Princ[iple] of Eq[ui]ty if otherwise.
1 Will. 111. 2 Will. 415. 1 Ch. Ca. 296.⁵⁹
A Warr[an]ty in the Deed ag[ains]t Crispin's &
Holmes's⁶² heirs—
==
Crispin conveys as Ex[ecu]tor immed[iate]ly
[pur]chases as Ex[ecu]tor to Holmes

==
The Intent theref[ore] Evid[en]t Wh[ich] is chiefly
regarded in Equity
==

In Law Crispin's & Holmes's Heirs Who pretend any Claim under Crispin's [Pur]chase from Yocum—estoppd⁶³ by the Indenture to say he had noth[in]g at the time of his selling to Saunders. C Litt. 47. b.⁶⁴

==

If Ten[an]t in Tail Mortg[age]s & after suffers a Recov[ery] this makes good the Incumbrance. 1 Ch. Ca. 120. Pig[ot] on Recov[eries] 120.⁶⁵ So here &c

Fifth Point. If affidavits taken in a former cause where one of the [pre]sent Def[endan]ts was concernd may be given in Evidence? Raym. 744. Ab. Ca. in Eq. 227. 1 Ch. Ca. 73. Gilb. Law of Evid. 57.⁶⁶

==

If this is {not} admitted—We shall have none—One Eternal Rule of Justice—others Artif[icia]l If what was sworn may be Evid[ence] a multo fortiori⁶⁷—written Evid[ence] Raym. 732.⁶⁸

A Diff[eren]t Consid[erati]on may be found from what is in the Deed. 1 Lev. 55.⁶⁹

AD (PHi-Logan)

¹ Records of the Pennsylvania Supreme Court, Records of the Eastern District, Appearance and Continuance Dockets, April Term 1752 – April Term 1758, September Term 1758 – April Term 1764, RG-33, Roll No. 1, PHarH.

² 1 Dallas 2: “[P]robated wills devising land were subject in the province as in England to be defeated in the collateral action of ejectment, where the probate was only *prima facie* evidence of the validity of the will.” See Robert Dechert, “Right to Trial by Jury in Will Cases under the Pennsylvania Constitution,” *University of Pennsylvania Law Review and American Law Register* 68, no. 4 (1920): 371.

³ See *OED*.

⁴ Daniel Weston was a Philadelphia Quaker and a brother of Lewis Weston, of Wapping, England. In court dockets, the lessee was identified as “John Goodright,” a fictitious name used in testing real estate titles, for which see Burton Alva Konkle, *The Life and Times of Thomas Smith, 1745–1809: A Pennsylvania Member of the Continental Congress* (Philadelphia: Campion & Co., 1904), 175.

⁵ Likely Thomas Stammers, a resident of Lower Dublin Township, Philadelphia Co., Pa., and John Paul (c. 1715/16–1786), a Quaker also of Lower Dublin Township.

⁶ In England, Scotland, and Wales, a pedigree was the ancestral lineage that allowed a family to pass its right to bear arms down through the generations through coats of arms. By this time, however, the term had broadened to a more colloquial usage to mean kinship connections.

⁷ Legal treatises recognized the limits of ecclesiastical authority concerning marriage and the law. For example, in a section titled “*Where and in what Cases Trial shall be by the Bishop’s Certificate, or in Pais [by a jury], or not,*” the author stated: “[t]he Right of Espousals is evermore triable by the Bishop’s Certificate, as if the Issue be *accouple en loyal matrimony* or not; this is triable by the Bishop, and not *per Pais*.... So if such Issue be in a Writ of Dower it shall be tried by the Bishop; so in an Appeal: But whether a Woman be a Feme covert or sole is always triable *per Pais*: So if the Issue be Wife or not Wife, married or not married, it is triable *per Pais*.” See *Baron and Feme* 43.

⁸ A paraphrasing of Sir John Willes’s opinion in *Omichund v. Barker*: “It is a very narrow Notion, that no one but a Christian can be an honest Man; God has imprinted in the Minds of all Men true Notions of *Justice* and *Injustice*, *Virtue* and *Vice*.... I will say very little of the Old Books *Bracton*, *Britton*, &c. small Weight is to be laid on them, because they are general *Dictums* in Popish Times of Bigottry, when we carried on little Trade, except the Trade of Religion.” See 2 Bacon, *Cases* 403.

⁹ 2 Bacon, *Cases* 397–412, *Omichund v. Barker*, Hill. 18 Geo. 2 (1744). Omichund (Omychund) was an Indian merchant who entered a business partnership with Barker, an employee of the East India Company. When Barker purchased goods with Omichund’s money and sold them but refused to give him the agreed upon share of the profits, Omichund sued in the mayor’s court in Calcutta. Barker departed for Europe before the case could be heard. He died on the voyage, leaving Omichund to sue Barker’s son in the Court of Common Pleas for payment of the debt. Commissioners traveled to India to take evidence from witnesses, leading to an objection from the defendant that said evidence should not be admitted because the witnesses gave oaths in the Hindu rather than Christian tradition, and to accept the evidence would require an act of Parliament. The court overruled the objection. Chief Justice Willes argued that Hindus could give evidence on oath because they believed in a God and a future state of rewards and punishment. He rejected Coke’s definition of an oath as “an affirmation or denial by any Christian of any thing lawfull and honest” (3 Coke, *Institutes* 165), on which the defense’s objection relied. “I know ... of no Writer, except Lord Coke,” he argued, “who has inserted the Word *Christian* in his very definition of an Oath.” Instead, Willes turned to Hale’s assertion that non-Christian oaths should be allowed “in cases of necessity” (2 Hale, *Pleas* 279), because “it ha[d] so much of the true Spirit of Christianity” (2 Bacon, *Cases* 408). This case also established the now largely obsolete “best evidence rule,” which held that an original document is superior evidence compared to a reproduction.

¹⁰ Gilbert 16: “But the true Meaning of the Rule of Law that requires the greatest Evidence that the Nature of the Thing is capable of, is this; That no such Evidence shall be brought which *ex natura rei* [Lat. from the nature of the matter], supposes still a greater Evidence behind the Parties own Possession and Power, for such Evidence is altogether insufficient and proves nothing, for it carries a Presumption with it contrary to the Intent for which it was produced.”

¹¹ 2 Rolle, *Abridgment* 583: “3. If it is alleged in avoidance of an Outlawry, that the defendant was in prison in Burdeaux in the service of the King under the mayor of Burdeaux, this shall be tried by the Certificate of the mayor of Burdeaux.”

1 Coke, *Institutes* 74 a.: “As if it be alledged in avoidance of an Outlawry, that the Defendant was in Prison at *Burdeaux* in the service of the Major of *Burdeaux*, it shall be tried by the Certificate of the Major of *Burdeaux*.”

¹² 8 *Modern* 322, *Sir John Walrond v. Jacob Senior Henricus Van Moses*, Mich. 11 Geo. 1, B.R. (1725): “*Nota* also, That in the principal Case it was now resolved, that a Copy of an Agreement registered in *Holland*, and attested by a publick Notary there, may

be given in Evidence for the now Defendant, especially since he proved that the Plaintiff took out another Copy of the same Agreement, and would not now produce it; therefore that Copy which the Defendant had taken out was given in Evidence.”

2 Rolle 346: “Note that upon trial of something beyond the sea, the testimony of a notary public is good proof and Chief Justice Ley says that such proof that they are beyond the sea should be allowed and we allow [it].”

2 Croke 542, *Draycot v. Heaton*, Hill., 14 Jac. 1, B.R. (1616): “Error of Judgment in the Court of *Derby*, in Debt upon an Obligation, where the Defendant pleaded *Non est factum* [Lat. not his deed], and found against him; The Judgment entred, was, *Quod capiatur* [Lat. that he be (bodily) taken]: But the Judgment certified was in this manner, *Ideo in Misericordia capiatur* [Lat. therefore he is amerced (i.e., will pay a fine)]; and this was assigned for Error; And it was moved, that these words (*in misericordia*) were stricken out, and so the line under it shews; And the Judgment only is *Capitur*; And to inform the Court, a *Certiorari* [a writ by which a higher court reviews lower court’s decision] was awarded, which certified, that the words *in misericordia*, were not in the Judgment, but a *Capitur* only. And being now moved, the Court would not allow thereof, but said that a *Certiorari* should not be awarded to an inferior Court, to certify that which the Record should certify: wherefore not having regard to that *Certiorari* (because the Record certified had those words (*in misericordia*) in it, and the line underneath is no defacing or drawing them out, and the *Capitur* was with another hand) it was therefore reversed.”

¹³ Inquisition postmortem was also known as an escheat: “An ‘incident’ of feudal law, whereby a fief reverted to the lord when the tenant died without leaving a successor qualified to inherit under the original grant. Hence, the lapsing of land to the Crown ... or to the lord of the manor, on the death of the owner intestate without heirs” (*OED*).

¹⁴ Lat. “The utmost rigour of the law, extreme severity” (*OED*).

¹⁵ In England, Scotland, and Wales in the 16th and 17th cents., heraldic visitations were inspections by kings of arms or junior officers (heralds) to regulate and register coats of arms (i.e., their right to bear arms) of the gentry and nobility and to record their pedigrees. The heralds’ visitation books were considered “evidence of facts therein recorded in matters of pedigree.” See Henry Roscoe, *A Digest of the Law of Evidence on the Trial of Actions at Nisi Prius*, 6th ed. (London: William Benning and Co., 1844), 149.

¹⁶ 1 Salkeld 281, *Stainer v. Burgesses of Droitwich*, Mich. 7 Will. 3, B.R. (1695): “So a Year-Book may be Evidence to prove the Course of the Court; yet in this Case it was admitted, That Heralds Books are good Evidence as to Pedigrees.”

1 Strange 162, *Pitton v. Walter*, Hill. 5 Geo. 1 (1718): “The question being, whether the lessor of the plaintiff was heir at law to him that last died seised; to prove the pedigree, the Chief Justice admitted a visitation in 1623. made by heralds, entered in their books, and kept in their office, to be read in evidence.”

¹⁷ Raymond, *Special* 84, *Herbert v. Tuckal*, Mich. 15 Car. 2 (1663): “Upon the Evidence in a Tryal at Bar the Question was, If one was of full age at the time of his Will made by him. And upon Evidence it appears that he was born the 14th of February, 1608. and he made his Will when he was of the age of 21 years within two days; and to prove his Nonage [i.e., time when he was a minor] the Defendant produced an Almanack, in which his Father had writ the Nativity of the Devisor, and it was allowed to be strong Evidence.”

¹⁸ 1 Lilly 744: “*Memorandum*. At a Trial at the Bar between *Baxter* and *Foster*, concerning the Title of Land, a Copy of an Inscription upon a Grave-stone in *London* was admitted in Evidence to prove Pedigree.”

¹⁹ Moore 451–52, *Vicary v. Farthing*, Pasch. 38 Edw. 1 (1594): “Between Vicary and Farthing at *nisi prius*, the issue was about full age, and two church books were given in evidence, whereof one was delivered to the jury in court with the assent of the parties, and afterwards the other was delivered to the jury out of court by the solicitor of one party without the assent of the court, and this was recorded in the *postea*.”

1 Croke 411, *Vicary v. Farthing*, Mich. 37 & 38 Edw. 1, B.R. (1595): “*Trespass*. The parties were at Issue, and at the tryal by *Nisi prius* in the County of *Devon*, to prove the Nonage of the Plaintiff at the time of the Lease made (which he would avoid) a *Church Book* was given in evidence.”

²⁰ Carthew 79–80, *Eccleston v. Petty* alias *Speke*, Mich. 1 W. & M., B.R. (1689): “Then it was offered in Evidence *viva voce* [Lat. orally], that at a Trial in Ejectment between *Sir William Gerrard* and the now Defendant, for a Parcel of the Lands now in Question, the Defendant produced a Deed of Release, which had a Clause in it to the prove the Pedigree. But it was objected, that this Evidence ought not to be allowed ... [b]ut the Court held this to be good Evidence.”

²¹ Matt. 1:1–17, which details Jesus’s genealogy.

²² 5 Geo. 2, c. 7 (1732): “An Act for the More Easy Recovery of Debts in His Majesty’s Plantations and Colonies in America.”

²³ *PA Law* 99, “An ACT for confirming the Sales of Lands by Attornies or Agents, and for ascertaining the Proof of Instruments or Writings made out of this Province” (1705): “Whereas divers Person living out of this Province, are and have been Owners of Lands within the same, and such Person have usually appointed Attornies to sell and dispose thereof ... BE IT ENACTED, &c. That all Sales of Lands, Tenements and Hereditaments formerly made by any Attornies or Agents ... are and shall be deemed adjudged good and effectual in Law to all Intents, Constructions and Purposes whatsoever, as fully as if the said Owners of such Lands had, by their own Deeds, Bargains and Sales, actually and really sold and conveyed the same.”

PA Law 148, “An ACT for Acknowledging and Recording of Deeds” (1715): “[A]ll Deeds and Conveyances made and granted out of this Province, and brought hither and recorded in the County where the Lands lie (Execution thereof being first proved by the Oath or Affirmation of one or more of the Witnesses thereunto, before one or more of the Justices of the Peace of this Province...) shall be as valid as if the same had been made, acknowledged and proved in the proper County where the Lands lie in this Province.”

²⁴ Lat. Where there is the same reason there is the same law.

²⁵ 1 Coke, *Institutes* 154 a., which discusses rents and does not mention deeds or pedigree.

1 Coke, *Institutes* 365 b.: “If a Woman had been tenant for life, the remainder or reversion to her next heir, and the woman had aliened in fee and died, this Warranty had barred her heir in Remainder or Reversion, but it is partly holpen by the said Act of 11 H. 7. [c. 20 (1494): ‘Certain Alienations Made by the Wife of the Lands of Her Deceased Husband, Shall be Void’] *viz.* where the woman hath any estate for life of the inheritance or purchase of her husband, or given to her by any of the Ancestors of the husband, or by any other person seised to the use of her husband or of any of his Ancestors, there her alienation, Release or Confirmation with Warranty shall not bind the heir.”

It is unclear to what JD is referring in 2 Coke, *Institutes* 256.

2 Coke, *Institutes* 322: “This termour [tenant] for years intended by this Law [6 Edw. 1, c. 11 (1278): ‘A Feigned Recovery Against Him in the Reversion, to Make the Termor Lose His Term’] must be by Deed by the express words of the body of this Act, *Issint que le termour eit recoverie per briefe de covenant* [LFr. so that the termor may have recovery by a writ of covenant]; which must be by Deed, as in those days

few were made otherwise, and so it was resolved by the Court of Common pleas, and this Act required a Deed, lest it might be used for delay.”

² Coke, *Institutes* 393: “*A.* holds lands of *B.* by priority, and other lands of *C.* by posteriority, and infeoffeth *D.* of both: this case is out of this Statute [13 Edw. 1, St. 1 (1285): ‘The Statute of Westminster the Second’], because he cometh to both the lands at one time, so as he holds not either of then *per antiquius feoffamentum, sed per unum & idem feoffamentum* [LFr. by old feoffment but by one and the same feoffment]; And therefore if he dieth, his heir within age, the Lord which first seisseth the body in this case shall have it.”

²⁶ 23 Hen. 8, c. 10 (1531): “An Act for Feoffments and Assurances of Lands and Tenements Made to the Use of Any Parish Church, Chapel, or Such Like.”

²⁷ 32 Hen. 8, c. 1 (1540): “The Act of Wills, Wards and Primer Seisins, Whereby a Man May Devise Two Parts of His Land.”

²⁸ 1 Coke, *Institutes* 291 a. does not discuss either of the statutes listed above.

²⁹ 10 Coke, *Reports* 88–93, “Doctor Leyfield’s Case,” Hill. 8 Jac. 1, B.R. (1611): “[I]t appears, that it is dangerous to suffer any who by the Law in pleading ought to shew the Deed it self to the Court, upon the general Issue to prove in Evidence to a Jury by Witnesses that there was such a Deed, which they have heard and read; or to prove it by a Copy: For the Viciousness, Rasures or Interlineations, or other Imperfections in these Cases, will not appear to the Court.... But the Copy of a Record may be shewed and given in Evid[ence] to the Jury for Records are of so high a Nature, and such Credit in Law, that they can’t be proved by other Means than by themselves and no Rasure of Interlineations shall be intended in them” (92 b.).

³⁰ Rasure: “The action of erasing something from a document, esp. by scraping to remove the surface of the parchment or paper; an instance of this, an erasure” (*OED*).

³¹ Probably David Lloyd (1656–1731), a Welsh Quaker and lawyer who became a prominent political figure in Pennsylvania, serving in a variety of civic positions in Philadelphia and Chester Co. He was also the likely author of the 1701 Charter of Privileges.

³² Possibly Richard Heath (d. 1711), clerk of the Assembly in 1711.

³³ Possibly Thomas Hart (c. 1629–1704), a Quaker merchant of Enfield, England, and formerly of Barbados. He was one of the original proprietors of the province of East Jersey. His son-in-law Walter Benthall, who became a proprietor in 1683, was a London merchant and broker.

³⁴ JD was probably referring to Gilbert 89, which discusses claims to estates without showing deeds but does not mention a docket book.

³⁵ Lat. let it have effect as far as it can.

³⁶ JD probably used Strange to support the assertion that “Matters of fact [pro][per]ly belong to Juries,” because it discusses “Razures & Interlineations.” 2 Strange 826, *Searle v. Lord Barrington*, Hill. 2 Geo. 2 (1729): “The plaintiff brought an action on a bond entred into to her husband by one *Wildman*, under whom the defendant claimed, and the bond was dated 24 June 1697. The defendant pleaded *solvit ad diem* [i.e., that he had paid the money on the day it was due], and relied upon the presumption, it being after twenty years: to encounter which the plaintiff at the first trial of the cause ... offered to give in evidence the indorsement of interest under the hand of the obligee in the year 1707 ... but *Pratt* C[hief] J[ustice] before whom it was tried, being of opinion it ought not be given in evidence ... and upon debate the other three Judges were of opinion, it ought to have been left to the jury.”

³⁷ Gilbert 78–79: “An old Map of Lands allow’d Evidence where it came along with the Writings and agreed with the Boundaries adjusted in an antient Purchase.”

Gilbert 101: “But the *Inspeximus* [‘A charter in which the grantor avouches to have inspected an earlier charter which he recites and confirms’ (*OED*)] on an antient

Deed may be given in Evidence, tho' the Deeds need no Inrollment, for an antient Deed may be easily supposed to be worn out or lost, and the offering the Inspecimus in Evidence, induces no Suspicion that the Deed is doubtful, for it hath a Sanction from Antiquity, and if it had been ill executed, it must be supposed to be detected when it was newly made."

³⁸ 1 Keble 877, *Wright v. Sherrard*, Pasch. 17 Car. 2, B.R. (1665): "An auncient Deed is good Evidence, without proving, or Seal on it."

3 Salkeld 153: "1. In *Ejectment*, the Plaintiff gave in Evidence a Counterpart of an old Lease, which he found amongst the Writings of his Grandfather's Title, but there were not Witnesses to this Lease, yet it was allowed good Evidence; for the Deeds about that Time (which was in the Reign of *Queen Eliz.*) were often without any Witnesses."

1 Levinz 25, *Garret v. Lister*, Pasch. 13 Car. 2, B.R. (1661): "[T]he original Lease could not be produced; but it being an ancient Lease, the Grandson of the Lessor producing a Counterpart found among the other Evidences of his Grandfather, it was allowed for Evidence, though no Witness was subscribed thereto."

1 Lilly 743: "An antient Writing that is proved to have been found amongst Deeds and Evidences of Land may be given in Evidence to a Jury, altho' the executing of it cannot be proved."

³⁹ See n. 38, above.

⁴⁰ Comberbach 249, *Smart v. Williams*, Pasch. 6 W. & M., B.R. (1694): "*Quære*: Whether a Scrivener's Book be Evidence to prove a Consideration paid. *Levinz*. No sure, no more than a Tradesman's Book. *Holt*. Ch[ief] J[ustice]. Not for himself, but for another it is; so a Tradesman's Book after his Death. We have allow'd a Burser's Book of a College for Evidence."

⁴¹ Comberbach 337, *Rex v. Hains*, 7 Will. 3, B.R. (1695): "Mr. *Savage* (a Barrester) Town-Clerk of *Worcester*, proved the Defendant was chosen Alderman at the usual Election in *Worcester*, the Monday next after St. *Bartholomew's* Day; Then a Copy of an Entry in the Court-Book of *Worcester* was offered in Evidence for the King, which being opposed, *Holt* said, A Copy of any Original is Evidence wheresoever the Original is Evidence, *i. e.*, if prov'd a true Copy."

⁴² 2 Strange 1129: *Warren, ex demiss' Webb v. Greenville*, Pasch. 13 Geo. 2, B.R. (1740): "Upon a trial at bar, the lessor of the plaintiff claimed under an old intail in a family settlement, by which part of the estate appeared to be in jointure to a widow at the time her son suffered a common recovery [i.e., 'In conveyancing. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a recovery of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer.... Common recoveries were abolished by the statutes 3 & 4 Wm. IV. c. 74' (*BLD*)], which was in 1699. And the defendants not being able to shew a surrender of the mother's estate for life, it was insisted that there was no tenant to the *praecipe* for that part, and the remainder under which the lessor claimed was not barred. To obviate this it was insisted by the defendant, that at this distance of time a surrender should be presumed; according to *1 Vent. 257*. And what is laid down in Mr. *Pigot's* book of *Common Recoveries*: and to fortify this presumption they offered to produce the debt book of Mr. *Edwards* an attorney at *Bristol* long since deceased, where he charges 32 *l.* for suffering the recovery.... And this being objected to as improper evidence, the court was of opinion to allow it." For 1 Ventris 257, see n. 44, below.

⁴³ Trial per pais: "Esp. with reference to a criminal trial: before or by one's fellow countrymen, esp. as represented by a jury" (*OED*).

⁴⁴ Duncombe 369: “In Debt the Plaintiff declares, that he had Judgment against Baron and Feme for a Debt of the Wives, *dum sola*, &c. [Lat. while unmarried] that they were in Execution, and suffered to Escape, the Jury found the Husband only in Execution and Escaped, and Judgment for the Plaintiff.”

Duncombe 375: “In Detinue of Charters, or *non detinet* [Lat. he does not detain], Verdict for the Plaintiff, and Damages, but the Jury did not find the value of the Deeds and a Writ of Inquiry was awarded to that purpose and returned, and ruled good; and by *Twisden Just.* Debt against Executor who pleads *plené* [Lat. fully], &c. and it’s found against him, and the Jury give no damages, that can’t be aided by Writ of Inquiry.”

1 Ventris 257, *Anonymus*, Pasch. 26 Car. 2 (1674): “In an Ejectment upon a Trial at Bar for Lands in ancient Demesne, there was shewn a Recovery in the Court of ancient Demesne, to cut off an Entail which had been suffered a long Time since, and the Possession had gone accordingly. But there was now objected against it, First, That no sufficient Evidence of it appeared, because neither the Recovery it self, nor a Copy of it was shewn; for in Truth it was lost. But the Court did admit other Proof of it to be sufficient; and said If a Record be lost, it may be proved to a Jury by Testimony.”

1 Salkeld 284–85, which reports on *Thurston v. Slatford*, Mich. 12 Will. 3, B.R. (1700). The case does not discuss testimony specifically but argues that “other evidence” could be provided to dispute an error in a written record: “if there be a Misentry, it might be supplied and corrected by other Evidence; for he should not be concluded by the Mistake or Negligence of the Officer, but still it is a Record, and some Proof, tho’ not a compleat Proof, and might be left to the Jury.”

⁴⁵ Copyhold (manor): “A kind of tenure in England of ancient origin: tenure of lands being parcel of a manor, ‘at the will of the lord according to the custom of the manor’, by copy of the manorial court-roll” (*OED*).

⁴⁶ 2 Strange 954–55, *Warriner v. Giles*, Mich. 7 Geo. 2 (1733): “AFTER the fire of *London*, power was given to the city to set out the publick markets, which was done in a very accurate manner, and entered in their books. An ejectment was brought by the lessee of one of the markets, wherein the boundaries were in question. And it was moved on behalf of the plaintiff to have the liberty to inspect the books, and take copies; which was granted. And the court compared it to the case of the court rolls, which are not considered the evidence of the lord, but in the nature of publick books, for the benefit of the tenant as well as the lord.”

⁴⁷ See *PA*, 2nd ser., vol. 19.

⁴⁸ Peter Petersson Yocum (Yokum, Yoakham, c. 1652–1701) resided on the Aronameck plantation, now part of West Philadelphia. Some of his transactions are recorded in *PA*, 2nd ser., 19:60, 266, 369–70, 489.

⁴⁹ Possibly Jonas Nilsson (1620–1693), Peter Petersson Yocum’s father-in-law.

⁵⁰ 1 Coke, *Institutes* 50 b: “First, That the things exchanged need not be *in esse* [actual existence] at the time of the exchange made. As if I grant a Rent newly created out of my lands in exchange, for the Mannor of *Dale*, this is a good exchange. Secondly, There needeth no transmutation of possession, and therefore a release of a Rent, or Estovers, or right to land in exchange for land is good. The things exchanged need not be of one nature, so they concern lands or Tenements whereof *Littleton* here speaketh.”

⁵¹ For 2 Strange 1129, see n. 42, above.

Comberbach 249 does not mention “impartial hands,” so it is likely, given the surrounding citations, that JD is referring to his earlier discussion on a scrivener’s book as evidence. See n. 40, above.

Gilbert 78: “If the Question be, whether a certain Manor be Ancient Demesne or not, the Trial shall be by *Domes-Day* Book, which shall be inspected by the Court.

Antient Demesnes are the Socage Tenures [i.e., ‘The tenure of land by certain determinate services other than knight-service’ (*OED*)] that were in the Hands of *Edward the Confessor*, and which *William the Conqueror* in Honour of him endow’d with several Privileges: *Domes-Day Book* was a Terrier or Survey of the King’s Lands, which was made in the Time of the Conqueror, and which ascertains the particular Manors which had this Privilege.”

⁵² Finch, *Precedents* 118, *David Eyton v. John Eyton & Jane ux’ & An. Eyton*, Trin. (1700): “The Plaintiff has renewed a Counterpart of the Deed of Settlement, and there was a *Proviso* as was mentioned in the amended Bill; and there was some Proof that some Part of the Land had been sold by *Randall*, and enjoyed accordingly, but no other Proof of the Settlement. At the Hearing it was insisted, that the Husband’s Answer, whereby he had confessed the Settlement was no Evidence against his Wife (being a Matter of Inheritance) and that without other Evidence of the Settlement they could not make Use of this, which they pretended to be a Counterpart, yet the Master of the *Rolls* decreed a Conveyance to the Plaintiff, and an Account of the Rents and Profits; and on Appeal this Decree was confirmed by my Lord Keeper, who thought, as this Case was, the Counterpart would of itself be Evidence enough at Law of the Settlement.”

⁵³ Possibly a reference to land rights granted during the administration of James Stuart, duke of York and Albany, for which see *The History of Pennsylvania: From Its Earliest Settlement to the Present Time*, ed. W.H. Carpenter and T.S. Arthur (Philadelphia: Lippincott, Grambo & Co., 1854), 99–100.

⁵⁴ Judith Nilsson Yocum (Yokum, Yoakham, 1658–c. 1727).

⁵⁵ For 2 Strange 826, see n. 36, above.

⁵⁶ 1 Strange 575, *Douglass v. —*, Mich. 10 Geo. 1 (1723): “Upon an affidavit that they had tendered a declaration in ejectment, and that the servants refused to call their master, or receive it, saying they had orders to take no papers, *Wearg* moved, that leaving it at the house might be sufficient, which was ordered accordingly.”

1 Strange 504, *Williams v. Johnson*, Hill. 8 Geo. 1 (1722): “The plaintiff brought his action against his daughter’s husband for her wedding cloaths; and the defence was, that the goods were furnished on the credit of the father; and to prove this the mother who was present at the chusing the goods was called to charge her husband, and allowed.”

⁵⁷ Skinner 647, *Webb v. Plumsted*, Trin. 8 Will. 3, B.R. (1697): “An Action was brought for Money received to the Use of the Plaintiff; upon the Evidence it appeared to be Money secretly deposited by the Wife, and a Note taken for it in the Name of a third Person; and after the Death of the Wife the Action was brought by the Husband; and in this Case it was proved, that the Wife said, that she had received the Money deposited, again; and an Exception was taken that this is not Evidence; *non allocator* [Lat. not allowed]; for the Matter being transacted by the Wife, and the Case depending only upon this Transaction, that which the Wife said, is Evidence.”

⁵⁸ 2 Bacon, *Cases* 406: “Hearsay evidence admitted, or a Wife received against her Husband, (in *Queries* touching Foreign Inquiries and Commercial Matters, the Rules relating to Evidence are not quite agreeable to the general Rules); indeed, in Cases of Treason, I do not apprehend that a Feme Covert is a lawful Witness against her Husband.”

2 Bacon, *Cases* 410: “Thus Hear-say Evidence has been admitted even upon particular Facts.”

⁵⁹ 1 Peere Williams 111, *Lamplugh v. Lamplugh*, Mich. (1709): “One had two Sons by several Venters, upon the younger of which, an Estate was settled expectant upon his Mother’s Death; and the Father purchased an Estate, Part Freehold of Inheritance, and the other Part a Lease for a Term of Years (of which Land he himself had the

Inheritance,) and bought these Lands, the Freehold, in the Names of the younger Son and the Father's Nephew, and the Leasehold, in the Names of the younger Son and the Father's Mother."

2 Peere Williams 415, *Deg v. Deg*, Trin. (1727): "And tho' it was made a Question at the former Hearing, whether the Will of *Simon Deg* the Father devising all his Lands in *Derby* and elsewhere in the County of *Derby* to Trustees for the Payment of his Debts, (the Testator having no other Lands there than the Lands in Question) did not amount to a Revocation of the Settlement in 1705, since the Will devised the same Lands to different Uses, and the Circumstances required by the Power were observed, tho' the Power itself was not mentioned; which Question was referred to the Judges of the Common Pleas, who determined that the Will operated as a Revocation; yet it was now held, that the Will only operated as a Devise of the legal Estate, still subject to the Trusts before declared for the Benefit of the Defendant *Simon Deg* the eldest Son; and that the Trusts being once declared, he (the Father) could not annex a Power of Revocation to it, or limit a Term thereout for the Benefit of his younger Sons by his said first Wife."

1 *Chancery* 296, *Ford Lord Grey v. Lady Grey and others*, Hill. 28 & 29 Car. 2 (1677): "The Father purchaseth in the Name of a Son unadvanced, it is an Advancement, not a Trust" (marginalia).

⁶⁰ Capt. Silas Crispin (1655–1711) was a Quaker and a member of the Free Society of Traders, a joint stock company founded to control the Pennsylvania economy. He inherited a significant amount of land from his father, Capt. William Crispin (1627–1681), and was also the executor of the will of his father-in-law, Capt. Thomas Holme, for whom see n. 62, below.

⁶¹ Charles Sanders (Saunders; died c. 1699) was a Quaker merchant and member of the New Pennsylvania Company, which was created after the failure of the Free Society of Traders. He was also a member of the Provincial Council for Philadelphia Co. between 1694–95.

⁶² Capt. Thomas Holme (1624–1695) was a Quaker, a member of the Free Society of Traders, and the first surveyor general of the province of Pennsylvania.

⁶³ Estop: "To stop, bar, hinder, preclude. Chiefly *reflexive* and in *passive*, to be precluded by one's own previous act or declaration from doing or alleging something" (*OED*).

⁶⁴ 1 Coke, *Institutes* 47 b.: "If the lease be made by deed indented, then are both parties concluded, but if it be by deed poll the lessee is not estopped to say that the lessor had nothing at the time of the lease made."

⁶⁵ 1 *Chancery* 120, *Goddard v. Complin*, Hill. 21 & 21 Car. 2 (1669): "There was also this Question put, Tenant in Tail mortgageth for years, and afterwards upon Marriage in consideration thereof suffers a Recovery to settle a Jointure &c. Whether this Recovery should enure to make good the Mortgage, it being designed for the Marriage Settlement only. Which was answered, If no Recovery had been, there could have been no Jointure. And the Jointress could not have avoided the Mortgage. As she is in by the Act of her Husband; and no subsequent Act of the Husband could avoid his own Act precedent."

Pigott 120: "[F]or if Tenant in Tail make a Lease not warranted by the Statute, or enter into a Judgment or Recognizance, and then suffer a Common Recovery, the Lease and other Incumbrances, are all good, which were before defeasible by the Issue."

⁶⁶ 1 Raymond, *Cases* 744, *Tiley v. Cowling* 14 Will. 3 (1701): "*Tiley* brought an action of trover against *Cowling*. And at the trial at the sittings at *Westminster* before *Holt* chief justice, Mrs. *Vaughan* the wife of Mr. *Vaughan* was produced to be a witness, to prove what was in the box. And *Holt* chief justice refused to admit her to be a witness;

because, whether *Tiley* recovered or not, this verdict might be given in evidence by Mr. *Vaughan* in an action to be brought by him against *Tiley*, with oath made of what was sworn for *Tiley* in this trial.”

1 Bacon, *Cases* 227: “2. The Depositions of Witnesses taken in a Cause, which was heard *thirty Years* before, were ordered to be made Use of, the same Matters being then under Examination as at present; and the Plaintiff’s Title not then appearing, and the Witnesses being since dead, though none of the present Parties were Parties to the former Suit, except the Tertenants [i.e., the occupants of the land].”

1 *Chancery* 73, *Terwit v. Gresham*, Pasch. 18 Car. 2 (1666): “Ordered upon long Debate, that Depositions of Witnesses taken in a former Cause thirty years since, where the same Matters were under examination and in issue as in this ... should be made use of in this Cause, albeit the Plaintiff in this Cause, and those under whom he claims, were not any Parties in the former Cause, inasmuch as the Ter-tenants were then Parties, and the now Plaintiff’s, Title did not then appear, and the Witnesses were dead.”

Gilbert 57: “An Action of Covenant brought against two, the Affidavit of one of them was given in Evidence as an Acknowledgment of them both, because the Acknowledgment of one of them where they had a joint Interest was to be looked upon as a Truth relating to them both, and the Consideration of the Matter is to be left to the Jury how far it is Evidence against the other.”

⁶⁷ Lat. by far the stronger reason.

⁶⁸ 1 Raymond, *Cases* 732–33, *Pitman v. Maddox*, Hill. 11 Will. 3 (1699): “[T]he plaintiff produced in evidence his shop-book written by one of his servants, who was dead. And upon proof of the death of the servant, and that he used to make such entries of debts, &c. It was allowed by *Holt* chief justice to be good evidence.”

⁶⁹ 1 Levinz 55–56, *Foster v. Foster*, Hill. 13 & 14 Car. 2, B.R. (1662): “Ejectment, and upon a Special Verdict, the Case was, *Margery Foster* being seized, there was a Deed made between her and her son *Matthew Foster*.... And the Jury find, That the Articles were made as well in Consideration of Natural Affection, as of *20 l.* but no Execution by Livery or Inrollment ... And *Twysden* said, That a Covenant in Consideration of *20 l.* to stand seized to the Use of my Son, is not good without Inrollment, but a Covenant in Consideration of *20 l.* and Affection, is good without Inrollment, because both Considerations are express; but all agreed, That in this Case no Use should arise, and that the Deed rested only in Agreement.”

18

Notes on a Libel in the Admiralty on Behalf of Some Danish Sailors, [1759]

These notes, which include a draft of a petition to the Vice Admiralty Court, relate to a libel brought against the ship *Juno* and its captain, William Saul, by a number of Danish sailors to recover wages.¹ Upon arriving in Philadelphia from Ireland and reading a proclamation from Frederick V, king of Denmark, demanding that all Danish subjects return home, the sailors asked Saul to release them from their service and to pay the wages due them. He refused to do so. Representing the sailors, JD argued that they had earned their wages when the ship’s

cargo was unloaded in Philadelphia, and that they should not forfeit their wages by leaving the *Juno* to obey their king's command.

In bringing a libel for withheld wages to the Vice Admiralty Court, JD had every reason to expect success, because most wage disputes were settled in favor of the sailors. In colonial Maryland, for example, seamen won every wage case brought before a judge.² JD also had the weight of precedent behind him, as he knew from reading Charles Molloy's 1676 treatise, *De Jure Maritimo et Navali: or, a Treatise of Affaires Maritime, and of Commerce*. "The Courts at *Westminster*," Molloy explained, in reference to the Court of Common Pleas, "have been very favourable to *Marriners* in order to the suing for wages, for at the Common Law they cannot joyn, but must sue all distinct and apart from their wages. Yet in the Admiralty they may all joyn, and the Courts at *Westminster* will not grant a Prohibition."³ While Molloy was writing, the judges of the Vice Admiralty and common-law courts were competing for the rights to settle merchant disputes, a battle for jurisdiction ultimately won by the common-law courts.⁴ For JD, the Vice Admiralty Court was the place where the foreign sailors he represented would be treated equitably, for, as he argued, it did not recognize nationality or race and treated everyone the same. This was a unique case, JD admitted, but in such cases where the law was unclear the natural principles of equity had to hold sway.

Borrogh Hendrickson & others late Mariners of a certain Merchant Ship calld the *Juno* whereof W[illia]m Saul is Master against the said Ship her Apparel & Furniture and also against the said W[illia]m Saul in a certain Cause of Substraction⁵ of Wages both Civil & Maritime—

To the Honourable Edward Shippen Jun^r Esq^r Judge of the Court of Vice-Admiralty for the Province of Pennsylvania⁶

The Libel of Borrogh Hendrickson, Golbrand Hokanson, Christian Hanson, Peter Yerkerson, Hans Toorpe, Peter Yenson, Andreas Callson, Hans Wollsen, Jacob Neelson, & Hokan Hendrickson late Mariners on board the Fly boat⁷ *Juno* William Saul Master humbly sheweth unto your Honour that sometime in the Month of March in the Year

of Our Lord One thousand seven hundred & fifty nine the said Ship whereof the said William Saul then was & still is ~~Commander~~ Master being at the Port of Cork⁸ in the Kingdom of Ireland and designd on a Voyage to Cape Breton⁹ & from thence to this Port of Philadelphia from hence to the Island of Jamaica & from thence [~~back on~~] to Lancaster in Great Britain the said W[illia]m Saul did ~~by himself~~ upon the High & open Seas within the Ebbing & Flowing thereof and Jurisdiction of this Court ship & hire the said Libellants to serve as Mariners on board the said Ship on the said Voyage at & after the Rate of Three pounds Sterling by the Month as by the Articles of Agreement made between the said W[illia]m Saul & these Libellants which these Libellants pray the said W[illia]m Saul may by the Order of this Honourable Court be obligd {here} to produce Relation being thereto had more fully appears. And these Libellants further shew unto your Honour that on or about the Eighteenth Day of March in the [*page break*] Year aforesaid they did go on board & enter into the Service of the said Ship and the said Ship having taken in a Load of Beef Butter {Cheese Coals¹⁰ & bottled Beer} & some other Commodities proceeded on the said Voyage and arrivd at Cape Breton where She deliverd the said Beef & Butter and took in a Sett of Ballast¹¹ and then proceeded to this port of Philadelphia where She ~~delivered the said Cheese Coals & bottled Beer~~ was safely moord on or about the Twenty second Day of August last past and the[n] deliverd the said Cheese Coals & bottled beer and unloaded the said Ballast And these Libellants servd as Mariners af[ore]s[ai]d on board the said Ship from the said Eighteenth Day of May {rch} to the ~~Delivery said Twenty second~~ {Third} Day of ~~August~~ {September} when the said Vessel [~~was~~] deliverd her said Cargo & unloaded as aforesaid in which said Delivery & Unloading as well as in all other parts of their Business these Libellants well & faithfully performd their respective Duties during the time af[ore]s[ai]d being [~~Three?~~]{Five} Months & ~~four Days~~{a half}, for which time according to the Agreement af[ore]s[ai]d the Respective Wages of Each of these Libellants amount to [~~Eighteen~~]{Sixteen} pounds & ~~Eight~~{Ten} shillings Sterling whereof Each of them receivd in Sterling Money the Sum of Six pounds which being deducted from the Sum of ~~Eight~~{Six}teen pounds & ~~Eight~~{Ten} shillings there remains due to each of these Libellants the Sum of ~~Twelve~~{Ten} pounds & ~~Eight~~{Ten} shillings Sterling {Amounting all together to [*illegible*]{O}ne hundred ~~twenty four~~{five} pounds Sterling} And the said W[illia]m Saul did take & receive of these Libellants respectively several Chests boxes & Wearing Apparel of the Value of Twenty pounds [*page break*]

or thereabouts in the Whole for which the said Master is really & truly indebted to these Libellants who have not receivd of the said Captain or any for him any part of the said Sum for the said Chests boxes & wearing Apparel And these Libellants well & truly performd their Offices & Duties of Mariners on board the said Ship during all the said Time & were obedient to the Lawful Commands of the Master thereof and well & truly deservd the said Monthly Wages and so much or greater Monthly Wages than was usually given to persons serving in the such Capacity in other Ships on the like Voyage And this was & is true and so much the said W[illia]m Saul hath confesd & acknowledgd to be true And the Parties proponent do alledge & propound of any other time and place and Salary & Wages Sum or Sums of money and of every thing else as shall appear from the proofs to be made in this Cause And these Libellants further humbly shew unto your Honour that they are the Subjects of the King of Denmark¹² an Ally & Friend of his Gracious Majesty George King of Great Britain France & Irelands &c And that by the Constitution & Laws of their Native Country—there is a General Militia establishd—in which every man is obligd to inlist & to appear when calld upon if within the Dominions of Denmark at the time & place by their King appointed under pain of Death And if they are in Foreign parts to return by the first Opportunity to Denmark on the first Notice they have of the Kings Command [*page break*] to that purpose under the same penalty And these Libellants being inlisted as af[ore]s[ai]d & subject to the said penalties in case of Disobedience shew unto your Honour that about the Beginning of this Month of September they did see in one of the Publick News Papers printed in this Province in the German Language A Paragraph¹³ containing a Command of the King of Denmark to all his Subjects who were Sailors in the Service of other Nations immediately to return to Denmark on pain of Death upon which these Libellants acquainted the said W[illia]m Saul ~~that they~~ with the Contents of the said Command & requested him that he woud pay them respectively the Wages due to them & discharge them from the said Ship which the said W[illia]m most unjustly refusd to do & still refuses Wherefore the Parties proponent alledging all & singular the premisses were & are true publick & notorious and that thereof there was & is a Publick Voice Fame & Report pray that legal proof thereof being made Right & Justice may be effectually administred to their Party in the Premisses &c

Dickinson

for the Libellants [*page break*]

Libel by Foreigners for Wages

Libel in the Admiralty on behalf of some Danish Sailors against the Ship Juno & William Saul Master for Substraction of Wages.

Case.

The Plaintiffs were shipped at the Cove of Cork the 18 March 1759 on a Voyage to Cape Breton—thence to Philadelphia from hence to Jamaica—and then to Lancaster in Great Britain

They discharged part of the Cargo at Cape Breton the Remainder in Philadelphia While here they saw a Proclamation of the King of Denmark Commanding all his Subjects in the Service of other Nations to return home on Pain of Death—in a German Newspaper.

Upon this they requested their Discharge from the Captain, & payment of the Wages then due to him—which last he refused. They Libel for those Wages.

==

The question is—if there does not arise an Equity in this Case for these Complaints, & Foreigners.

==

The Admiralty is established on the generous Principles of Humanity & Publick Good— It looks on the whole World as one great Society— Its Rules are those of Civil Law & of Nature—that is of Reason & Virtue— It makes no Distinction between Nations— “Tros Rutulusne fuat nullo discrimine habeo”¹⁴ It regards the {barbarous} Inhabitants of Africk & the polite people of Europe—with an Equal Eye—

Therefore my Clients will meet the same Respect as their Antagonists & your Honour will pay some Respect to Arguments that derive their Spring from the {Constitution of the} most distant Countries].

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Unnecessary to shew how much Mariners deserve to be favoured

It is Certain the Common & Admiralty Law have always regarded them with great Tenderness

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Salkeld says that the Manner of suing for Wages has been [page break] owing entirely to the Kindness of the Common Law to poor Sailors—for their Ease in Joining.¹⁵ & Prohibition

de[ni]ed tho[ugh] Contr[ac]t sugg[este]d to be on Land. Moll. Dom. 458.¹⁶

==

Seamen's Wages are not liable to ~~W~~{Av}erages. Moll. Dom. 134.¹⁷

So in a Storm they have an Immunity of throw[ing] out last ~~in~~ Laws of Oleron¹⁸ 16 Art[icle] & Observ[at]ion.¹⁹ And their Tonnage is to be free from all Average. ib[idem].

So if a Vessel is seizd for Debt, or is otherwise forfeited—the Mariners shall receive their Wages. Moll. Dom. 457.²⁰ Lex Merc. 104.²¹ So if they are wounded or taken they shall receive Wages & be cur[e]d or redeemd. Laws of Oleron Art[icle] 6. & Obs[er]vati[on]. Moll. Dom. 129.²²

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On the other hand they are liable to severe penalties for any Offences— As for Mutiny &c or desert[ing] the Ship whereby Damage happens.

But where No Offence has been comm[itted] No Inj[ury] done—they are always Obj[ec]ts of Favour in Every Court— These poor people have done no Injury— The Vessel had deliv[er]ed her whole Cargo & was safely moord— No Offence or Crime Unless apply[ing] to this Co[ur]t be one. Vide 5 Art[icle] of Oleron to this [Pur]pose Even where the Sailors leave the Ship w[ith]out Consent—th[at] no Offence. Moll. 126. 457.²³

So in 12 Mod. 408. Per Holt Chief Justice—²⁴ If Ship goes Freight of an outward Voyage, the Seamen shall have their whole Wages out; but if at their Return the Ship be taken, or other Mischief happen, whereby the Voyage homeward is lost—they shall have but half Wages for the time they were in Harbour abroad.²⁵

==

This Case serves to shew your Hon[our] the Diff[erence] too establishd in all the Books between Outw[ar]d & Homeward bound Voyages—

Freight in some of the Writers on Maritime Affairs is calld the Mother of Wages²⁶—& therof[ore] in an Outw[ar]d bound Voy[age] if a Vessel is lost before She comes to a Port of Deliv[er]y— The Seamen lose their Wages²⁷—as the Owner loses his freight—²⁸ ~~And this is the Reason given by all those Authors—that if this was not [the Law]~~ But when the Vessel has deliv[er]ed her Load—As the Merch[an]t [page break] has the benefit of his Freight—the Sailor shall have his Wages

To the same purpose is *ibid*[em] 236—²⁹ 179 The Reason of these Cases founded on Justice— The Labour was really done. {==}

Now in Our Case Sir— We have been at 2 places of Deliv[ery] the Vessel is quite unloaded—& moord— Our Lives are forf[ei]t[d] if We stay—& accord[in]g to those G[entle]men—Our hard earnt pittance is forf[ei]t[d] if We go In so hard a Case— We had no other Refuge than in the [Pro]tection of this Court

==

But You deserted the Ship & forf[ei]t[d] your Wages— We deny it— Moll. 126 says expressly th[at] when the Vessel is securd—the men may go on shore {even w[ith]out the Capt[ai]n's consent,} if they return in a reasonable time

Here he sent on shore those who staid on board. And We came to obtain Justice— Courts of Just[ice] wo[ul]d be N[ui]sances & ind[icta]ble if a Man was to be punishd for appeal[in]g to them.

==

Well but leav[in]g the Ship anyhow You lost your Wages. If these G[entle]men can [per]swade your Hon[our] that this is a Maxim of the Law—& that losing of Wages is an Eternal Consequence of leav[in]g [a]{{[A]}} Ship—& th[at] it is a brutum fulmen³⁰ that knocks down Oppos[iti]on—to be sure You must decree ag[ain]st Us—

But if your Hon[our] is to think or feel on this Occasion—If Law or Reason or Conscience or *illegible*{J}ustice is to be regarded—then I say those G[entle]men are much mistaken

==

By the Hanseatique Laws—³¹ Wages were to be p[ai]d at three times³² Moll. Dom. 145.³³ But by the Laws of Oleron & Wisbuy—³⁴

If the Master apprehends the Men intend to leave him *illegible*{h}e may retain {a reasonable} part of their Wages—*ibidem* & 459.³⁵

Then at least We are entitld to some part of what We have labourd for— And if yo[ur] Honour &c.

==

But Sir We have Cases still stronger— Says Moll. 127—³⁶ A Mariner may have his either before or during the Voyage for these 4 Reasons: In Case he is made Master or Mate of ano[the]r Ship: If he marries, and then he is obligd to refund what he has rec[eiv]e[d]: If he made any [Pro]viso: If the Voy[age] is finishd, the

Ship unloaded & light &c. In none of these [*page break*]
Cases does he refund—but in the first 2.^d

And I suppose the Reason of the Law there was &c Or th[at]
he might have staid a little longer for the Pleasure of Marr[iage].

However if {Th}e Word Voy[age] must mean here—to the first
port of Deliv[ery]—for these are calld Reasons for leav[in]g a Ves-
sel during the Voyage. I appeal to your Hon[ou]r's Con-
science— If these are suff[icien]t Excuses for leaving a Vessel

If the Case of these poor Foreigners is not much more
de[serv]ing.

==

There is something Sir—just before this Case wh[ich] resem-
bles Ours a good deal— If a Master entices a Seaman from
ano[the]r The first shall have him—& the 2.^d Master shall pay dou-
ble Wages.

{Moll. 127.} ³⁷

Now if this is the Law between 2 Masters—how much stronger
in the Case of a {X} Sovereign—

{X Here Capt[ai]n Saul knew of this [Pro]clam[ati]on for he told Me it
was publishd 9 mo[n]th[s] ago in the London Gazette.} ³⁸

We are Subj[ect]s to the King of Denmark— He is our Liege
Lord We are in his Service as Militia— He is a friend an Ally A
Relation of Great Britain— Your Hon[ou]r will pay due Reg[ar]d
to the Treaties between him & Engl[an]d & do Justice both to him
& his Subjects.

{Vide Treaties}

Publick Rights must always be preferred to **Private**

Contracts—³⁹ The Alleg[iance] these poor men owe their
Sovereign—cannot be destroyd—& ought not to be violated

Quantum

Meruits⁴⁰

{A}s far as other Engagem[en]ts can be reconcild with that—
let them This your Hon[ou]r woud do by grant[in]g them a **Quan-
tum meruit**—for their past Labour—& suffer[in]g them to return
to their Native Country.— Vide Moll. Dom. 145. 6.⁴¹

==

This is an uncommon Case: & in Wood's Ins. Civ. Law—It is laid down
as a Maxim— “If any Case happen &c 122.⁴² So 123. 124. 126. 127—⁴³
In summ[a] æquitatum ante oculos &c.⁴⁴

AD (PPL-JDFP)

¹ Libel: “A formal document, a written declaration or statement” (*OED*), but more specifically: “[i]n admiralty practice, the first pleading of the complainant.... The name was borrowed from the Roman law where a pleading known as the *libellus conventionis* was employed to commence an action. The word libel continued to designate the first pleading in an action under the civil law.” See *New International Encyclopædia*, 2nd ed., 20 vols., ed. Daniel Coit Gilman et al. (New York: Dodd, Mead and Co., 1906), 12:186.

² David R. Owen and Michael C. Tolley, *Courts of Admiralty in Colonial America: The Maryland Experience, 1634–1776* (Durham, N.C.: Carolina Academic Press, 1995), 147.

³ Molloy 211.

⁴ George F. Steckley, “Merchants and the Admiralty Court During the English Revolution,” *American Journal of Legal History* 22, no. 2 (1978): 137.

⁵ Substraction: “The withdrawal or withholding of something beneficial or useful, or to which another person is entitled” (*OED*).

⁶ Edward Shippen IV (1729–1806), one of Pennsylvania’s preeminent jurists, read law with Tench Francis (d. 1758) and studied law at the Middle Temple. In 1755 he became a judge of the admiralty.

⁷ Fly-boat: “A fast-sailing vessel used chiefly in the sixteenth and seventeenth centuries ... for rapid transport of goods, etc., esp. in the coasting trade” (*OED*).

⁸ Present-day Cóbh in Co. Cork, Ireland.

⁹ Cape Breton Island (Île Royale) was home to the fortress of Louisbourg, which the British captured in 1758 during the French and Indian War.

¹⁰ That is, charcoal.

¹¹ Ballast: “Any heavy material, such as gravel, sand, metal, water, etc., placed in the hold of a ship to weigh it down in the water and prevent it from capsizing when under sail or in motion” (*OED*).

¹² Frederick V (1723–1766) ruled Denmark from 1746 until his death.

¹³ Christopher Sauer II’s (Sower; 1721–1784) *Pensylvanische Berichte* was the only German-language newspaper known to have been printed in Pennsylvania in 1759.

¹⁴ Lat. “The Rutulian cause and Trojan have like favor in my eyes.” Verg. *Aen.* 10:108.

¹⁵ 1 Salkeld 33: “[Chief Justice Holt] held, it was by mere Indulgence that Mariners were permitted to sue in the Admiralty for their Wages: And this Indulgence was, because the Remedy in the Admiralty was the easier and better. Easier, because they must sever here, whereas they may join there; and better because the Ship it self is answerable.”

¹⁶ The abbreviation “Moll. Dom.” suggests JD is referencing c. 5 of the first book of Molloy entitled, “The Right of the Flag, as to the acknowledging the Dominion of the British Seas” (75–96). Instead, he is citing Justice 458: “Yet in the Admiralty they may all joyn, and the Courts of *Westminster* will not grant a Prohibition: And so it was ruled, where one *Jones* a Master of a Ship was sentenc’d in the Admiralty for Wages at the Suit of poor Mariners; a Prohibition being prayed upon a Suggestion that the Contract was made at Land, and not *super altum mare* (i.e., upon the high seas).” The same passage can be found in Molloy 211. It is possible that JD thought Molloy wrote Justice, or that “Moll. Dom.” was his own shorthand for Justice’s text.

¹⁷ Justice 134: “Seamens Wages are not liable to *Avaridges*.”

¹⁸ The Laws of Oleron (Rôles d’Oléron) was a maritime legal code enacted by Eleanor of Aquitaine (c. 1122–1204), suo jure [Lat. in her own right] duchess of Aquitaine, and named for the island of Oleron off the western shore of France that was part of

her duchy. The forty-five articles of the code, introduced to England by Eleanor's son, Richard I (the Lionheart; 1157–1199), detailed captains' rights and responsibilities.

¹⁹ Laws of Oleron, art. 16: "When a Ship is arrived with her lading at *Bordeaux*, or elsewhere, the Master of the Ship ought then to say to his Company, Sirs, will you freight by your selves, or be allowed at the Freight of the Ship [i.e., take a portion of the money paid to transport the ship's cargo]? To which they are to answer which of the two they intend. If they take as the Freight of the Ship shall happen, they shall be allowed proportionably. And, if they will freight by themselves, they ought to do it so as that the Ship be not hindered thereby. And, in case no Freight may be had, the Master is not to blame; and he ought to shew them their Ship-fare, and to weigh it out the each of them. And, if they will there lade a Tun of Water, instead of so much Wine, they may. And, in the case there should happen at Sea a Casting of Goods overboard, the Case is the same for a Tun of Water, and is a Tun of Wine, or other Goods, Liver [load] by Liver. But, if Merchants do freight the said Vessel, they shall have the same Freedom and Immunity as the Mariners have." See Estienne Cleirac, *The Ancient Sea-Laws of Oleron, Wisby, and the Hanse-Towns Still in Force*, transl. Guy Miegé (London: J. Redmayne, 1686), 7.

²⁰ Justice 457; Molloy 210: "If a Ship happens to be seized for Debt, or otherwise to become forfeited, the Mariners must receive Wages."

²¹ The relevant passage is in Gerard Malynes, *Consuetudo, Vel, Lex Mercatoria: or, The Ancient Law-Merchant*, 3rd ed. (London: T. Basset, 1686), 105: "If it happen a Ship to be prised for debt, or otherwise to be forfeited, yet the Mariners hire is to be paid, and if she proper, to receive their pay in the same Money that the freight is paid with."

²² Justice 129. The top half of the page is slightly revised version of art. 6, which reads in part, "But if by the Master's Orders and Commands any of the Ship's Company be in the Service of the Ship, and thereby happen to be wounded or otherwise hurt, in that Case they shall be cur'd and provided for at the Costs and Charges of the said Ship." The bottom half of the page is titled "*OBSERVATION*," and is an exposition of the article.

²³ Justice 126: "ARTIC. V. If a Vessel departing from one Port, Laden or Empty, arrives at another, the Mariners shall not leave the Ship without the Master's Consent: If they do, and by that Means she happens to be lost or damnify'd, they shall be answerable for the Damage; but if the Vessell be Moor'd, and lying at Anchor, with a sufficient number of Men aboard to keep the Decks and Lading, they may go without the Master's Consent, if they come back in good time; otherwise they shall be lyable to make Satisfaction, if they have the wherewithal."

Justice 457, Molloy 210: "If the Ship breaks Ground and sets Sail, if after she arrives at her desired Port, their full Pay continues till she returns; nor may they in any wise depart from on Ship-board without Leave or License of the Master; if they do, and any Disaster happens, they must answer: Yet at such Port if the Vessell be well moored and anchor'd with two Cables, they may go without Leave: So as they leave a sufficient number behind them to guard the Decks: But then, their Return must be in due Season; for if they make an unreasonable Stay, they must make Satisfaction."

²⁴ John Holt was lord chief justice of England between 1689 and 1710.

²⁵ Here, JD is referencing 12 *Modern*, 408–09, *Lord v. Francis*, Trin. 12 Will. 3, B.R. (1700).

²⁶ Justice 458; Molloy 212: "If Goods are so imbezled, or so damnified that the Ship's Crew must answer, the Owners and Master must deduct the same out of their Freight to the Merchants, and the Master out of the Wages of the Mariners; for though Freight is the Mother of Wages, yet is it the very Father of Damage."

²⁷ 12 *Modern* 442, *West v. West*, Hill. 12 Will. 3, B.R. (1700): "In respect to Seamen's Wages, the Usage is, if the Ship be lost before Arrival in the Port of Delivery, they lose

their Wages out. If she arrive safe in Port, and is lost in her homeward Voyages, they have their Wages out, but lose the homeward Wages. If they run away after Arrival in Port abroad, they lose their Wages.”

²⁸ Justice 457–58; Molloy 211: “But if the Ship perishes at Sea, [the mariners] lose their Wages, and the Owners their Freight. And this being the Marine Custom, is allow’d by the Common Law as well as the Civil Law.”

²⁹ Possibly a reference to Justice 236, which contains a series of resolutions the Privy Council passed on Feb. 18, 1632, to accommodate and settle “*the Difference concerning Prohibitions, arising between his Majesty’s Courts at Westminster, and his Court of Admiralty.*” The second resolution reads: “If Suit be before the Admiral for Freight, or Mariners Wages ... a Prohibition is not to be granted.”

³⁰ Lat. “A mere noise; an ineffective act or empty threat” (*OED*).

³¹ The Hanseatic Law emerged as part of a commercial league that originally united the north German towns of Lübeck, Brunswick, Dantzic, and Cologne together in the late 1100s, but grew to incorporate more towns from the Baltic to the North Sea. See Cleirac, *Ancient Sea-Laws of Oleron*, 22.

³² Laws of Oleron, art. 28: “The Masters shall pay Mariners their Wages, in three Terms, viz. one Third upon their Departure, another Third when the Ship is unladen, and the Remainder upon their Return home.” Cleirac, *Ancient Sea-Laws of Oleron*, 25.

³³ Justice 145: “The 28th Article of the *Hanseatiques* ordains, that their Wages should be paid at three several Payments; one Third when they set Sail upon a Voyage, one Third when they arrive at their Port of Discharge, and the other Third when the Ship is return’d home.”

³⁴ The Laws of Wisby are a 16th-cent. maritime code from the port of Wisby (now Visby) on the Swedish island of Gotland in the Baltic Sea.

³⁵ Laws of Oleron, art. 18: “When a Vessel hath unloaded, and the Mariners demand their wages ... the Master may lawfully keep back part of their Wages, till they have brought back the Ship to the Port from whence she came, unless they give good Security to serve out the whole Voyage” (Cleirac, *Ancient Sea-Laws of Oleron*, 8); Laws of Wisby, art. 31: “When the Ship is arrived at the Place appointed, if the Mariners will have their Wages paid, those that have neither Chest, nor Quilt, nor any other Moveables on Board equivalent to their Salary, shall give a Security to the Master, how they shall serve him to the end of the Voyage, or till the Ship be come home” (*ibid.*, 17). Justice 459; Molloy 213: “Mariners after they have unladed the Ship, if they demand their Wages, and there be any Suspicion of their Departure, the Master may detain a reasonable Proportion of the same till they bring back the Ship, or give Caution to serve out the whole Voyage.”

³⁶ Justice 127: “However, a Mariner may demand, and ought to have his Discharge, either before or during the Voyage, for these four Reasons: In case he is made Master or Mate of another Ship; If he marries, and then he is oblig’d to refund what he has reciev’d; If he made any Proviso in his Bargain for quitting the Ship; If the Voyage is finish’d the Ship disarm’d, unloaded and light, the Sails, Tackle and Furniture taken away and secur’d.”

³⁷ Justice 127: “[I]f any Master entices away a Mariner hir’d before by another, the last Master shall forfeit to the first 25 Livres, and the Mariner half the Wages he was to have had of the Master that so enticed him.”

³⁸ Not found.

³⁹ The word “contracts” was written over a deleted dash.

⁴⁰ Lat. as much as he deserved or what he has earned.

⁴¹ Justice 146 reprints a slightly revised version of art. 19 of the Laws of Oleron: “If the Master hire the Mariners in the Town to which the Vessel belongs, either for so

much a Day, Week or Month, or for such a Share of the Freight; and it happens that the Ship cannot procure Freight in those Parts where she is arriv'd, but must sail further to obtain it: In such Case, those that were hir'd for a Share of the Freight, ought to follow the Master, and such as are at Wages ought to have their Wages advanc'd *Course by Course*, that is, in Proportion to the length of the Voyage, in what 'twas longer than they agreed for, because he hir'd them to one certain Place."

⁴² Wood 122: "If any Case happen which is not provided for by any known or written Law, it shall be determin'd by the natural Principles of Equity, which is an universal Law, and extends to all possible Cases."

⁴³ Wood 126–27: "All Rules, whether natural or positive, have such a use, as universal Justice, which is their Design, assigns to each of them. Thus the Application of them is to be made, by discerning what this Design requires, which in natural Laws is Equity, and in positive laws is the Intention of the Lawgiver. And in this Discernment also, the Knowledge of the Law does principally consist."

⁴⁴ Lat. "In short, the judge, who is assigned this action, ought to have the highest equity before his eyes." The complete phrase is: "In summa æquitatem ante oculos habere debet iudex, qui huic actioni addictus est." Just. Digest, 13.4.4.

19

Notes for *Abraham Taylor Qui tam &c v. The Brig Elizabeth*, [1759]

These notes relate to a proceeding in the Vice Admiralty Court on February 26, 1759, in which the collector of customs sought forfeiture of a formerly French-owned vessel, the brig *Elizabeth*, on the grounds that it had been used to violate the Navigation Act of 1696. JD made two arguments against the forfeiture, the first of which was that the Navigation Act did not apply to English-owned vessels coming from foreign ports. Apparently referring to Section 3 of the Navigation Act, JD argued it did not restrict importation of goods into the colonies but only into England. Reading the 1696 statute in conjunction with the Navigation Act of 1660, he argued that it limited colonial trade only in that it required that imports from foreign countries be carried in English vessels and that exports of specified types of goods be limited to England.

JD's second argument was that the *Elizabeth* had not done anything to justify its forfeiture, because it had not landed its cargo, which included French sugar and molasses. Instead, it had asked for a determination as to whether it could lawfully do so; if the determination was that landing its cargo was unlawful, the *Elizabeth* intended to go elsewhere, possibly Holland. JD also argued that, unless the *Elizabeth* landed its cargo, it was not obligated to prove that it had registered. This document has been dated in the last year that the plaintiff held the office of deputy collector of customs.

Ab[raham] Taylor¹
Dep[uty] Coll[ector]
v
The Brig² Elizabeth

} **Libel & Inform[at]ion** Qui tam &c³ In the Adm[ira]lty for import[in]g Goods not belong[in]g to English Subjects not be[in]g an English built Vessel & having no Register.

The [Pro][per]ty on the Evid[ence] must be gr[an]ted to be English Therefore We have a Right to trade under all the Stat[ute]s except the 7 & 8 W. 3. 22.⁴ now disputed.

Two Points.

Vide 12 C. 2. c. 18.⁵

1st. If the Elizabeth (Whether Eng[ish] or Fren[ch] built) as She belongs to English Subj[ec]ts & comes from a foreign port is included w[ith]in 7 & 8 W. 3.

2^d. If She is included— Whether under the Circumst[ance]s of the [pre]sent Case She has done any thing to incur a forfeiture?

First Point.

Two Constructions contended for.

Evid[ence] plain th[at] She is Engl[ish] built but not material now if 7 & 8 W. 3. dont extend to Vessels com[in]g from foreign ports & belong[in]g &c

Design of th[at] Stat[ute]⁸ app[ea]rs from Preamble “to [pre]vent the Loss of a great part of the Plant[at]ion trade to this Kingdom.” And Preamble of 15 C. 2. c. 7. § 5. “for maint[ainin]g greater Correspondence &c”

The 15 C. 2. settles what Trade shall be carried on to Engl[an]d The 7 & 8 W. 3. secures th[at] Trade.⁶

[θ] The very Recital⁷ shews it was only to conf[er?] the Trade ment[ione]d in 12 C. 2. not to create any new Trade.

If the Stat[ute] meant to [pre]vent Imp[ortati]on or Expor[tati]on gen[er]ally— the Sense wo[ul]d have been complet w[ith]out ment[ionin]g the “Kingd[om] of Engl[an]d Dom[ini]on of &c” & the Parl[iamen]t had a preced[en]t before them of such gen[er]al terms in the 12 Car. 2. c. 18.

{⁰} Quite contrary of the Rules of
 Logick & Com[mon] Sense, to mention [par][ticu]lars in **concreto**⁹ & then individually[;?] ==
 “Under the Tropics &c” ==
 Besides in this Gen[era]l Sense— No Goods could be imported or exported from or to Engl[an]d but in Eng[lish] built Vessels—wh[ich] daily Experience con[tr]a[d]ic[ic]ts.}

It woud be say[in]g the same th[in]g over again & this Absurdity {Vide 3 & 4 Ann. c. 10¹⁰ very strong.}

That no goods shall be exported &c to any part of the **world**—nor to the {⁰} Kingdom of Engl[an]d Dom[ini]on &c Every man in Lan[c[aste]r]

This is confirmd by the Instance of Prize Ships who by § 19 of 7 & 8 W. 3. are to have the Priv[ilege] of Engl[ish] built Ships, & yet by § 3 it is “only to export &c to and from this Kingdom & the places aforesaid {.}”¹¹

{So Ships employed by the Comm[issione]rs very express.} ==
 So Carkasse’s B[ook] of Rates pa. 34.¹² 15 C. 2. c. 7. § 8. of Vessels wh[ich] may trade to the Plant[at]ions: adds in the Margin “Or Prize Ships made free, 7 W. 3.”¹³ But the Author takes no manner of Notice th[at] that 8th § is repealed by 7 W. 3.

==
 This Clause but one Sentence with Commas, & the words export import synonymous with **laden carried** {&c} ==
 This Act of Parl[iamen]t made in time of War with France¹⁴ & coud [*page break*] coud only relate to such Trade as was then carried on not to the little Emolum[en]ts of little flags of Truce—

War with France. In concreto Prize Vessels Bonds given

Ad ea quæ frequentius accidunt &c¹⁵

==

The Trade of the Plant[at]ions to other places too incons[idera]ble to be meant by the Parl[iamen]t Especially to the French Islands from whence they thems[elves] are so

Post. 266.¹⁶

X This founded on 12 C. 2. c. 18. § 18. & reg[ar]ds only the goods ment[ione]d therein wh[ic]h are the [Pro]duce of the Colonies So in 3 & 4 Ann. c. 10. § 7. relates to 12 C. 2. very strong
θ Except to Spain 12 C. 2. c. 18.} to Engl[an]d &c {& 7 & 8 W. 3 only relates to 12 C. 2. c. 18.

careful to keep Us. Postlew. 266. {Did the English Legislature intend that We should not carry on the French Trade for them except in English built Vessles— Absurdity—}

==

What makes it still more evid[en]t is 13 § of 7 & 8 W. 3 wh[ic]h requires Bonds to be given for {X} discharg[ing] their Loads in Engl[an]d or the Plantations—so th[at] even these Engl[ish] **built Shipp[ing]** cannot carry the **[Pro]duce of the Colo[ni]els** {so mentiond in 12 C. 2.} to other places—wh[ic]h confirms my Doct[rine] th[at] the Intent[ion] of the Act was solely to confine the Plant[at]ion trade{θ}

But this is noth[in]g to the [Pro]duce of other Countries imported in Vessels qualified accord[ing] to the 12 C. 2. &c or the [Pro]duce of the Col[onie]s not ment[ione]d in 12 C. 2. c. 18. S[ection] 18.

Thus by this Act wh[ic]h [pro]hibits Export[at]ion from the Plant[at]ions to Europe unless first landed in England § 14. & the 15 Car. c. 7. wh[ic]h [pro]hibits Import[at]ion of European Goods unless shipd in Engl[an]d. **All the Plant[at]ion Trade** is confind to England. To the utter Exclusion of all For[ei]g[ne]rs

==

I woud ask this one Q[ues]tion— If France or Spain woud [per]mitt our Ships to be their sole Carriers to {for[eign] parts in} Europe, & those Ships when they have got their Loads were to call in here & refit or change before they went their Voyage woud this be w[ith]in 7 & 8 Wm 3. It wo[ul]d be madness to say so. [page break]

If then 7 & 8 W. 3. does not extend to Trade carried on between the Plant[at]ions & other ports—Then no Reg[iste]r is necessary for Us—but only {a} Qualif[icati]on under 12 C.

2. viz A Certif[icate] of be[in]g bought & ownd & navigated accord[in]g to the Act—wh[ich] Certif[icate] the Off[ice]r is to allow Us.

But if the Court is of Opinion th[at] that ext[en]ds to this Trade

Second Point. Yet We submitt Whether in the [pre]sent Case She has done any thing to incurr a forfeiture?
==

These circumst[ance]s woud tend to excuse her from a Forf[ei]ture even if She is a french built Vessel but I shall consider her as Engl[ish]—wh[ich] app[ea]rs from these [Pro]ofs.

1.st The Opinion of know[in]g Capt[ai]ns & Workmen:

2.^{ly} From the Papers [pro]duced: Her Name is English.

Your Hon[ou]r has determ[in]ed Trade with France to be Lawful & th[at] the [Pro]p[er]ty of this Vessel was vested in Us by th[at] Trade

==

You conseq[uen]tly determ[in]ed the force by wh[ich] &c unlawful & yet We are criminated for th[at] very force—wh[ich] was the fault of others & our Inj[ury]

==

Obj[ect]ion. We were going to some Engl[ish] Port—& designd &c this no more

Ans[we]r. We did not intend to do any th[in]g but what We lawfully might— Does not the Intention make the Crime

We designd to enquire what might lawfully be done—if We co[ul]d not trade—then We might go to Holland—

Inst[ance] of Vessel unload[in]g in the Downs.¹⁹ Moll App^{x}. 15. 16.²⁰ Co Litt. 49—V[ide] Affectio tua &c²¹

Pen[nsylvania] Stat[ute]¹⁷ not to be extended ib[idem].

X mean[ing] of the
Word Trade a trade
to deliver Skin.
293.¹⁸

== From Reason— It is not the import[ing]—
but the Land[ing] th[at] makes the Inj[ury] &
theref[ore] the Offence{x}. So Molloy's
App{x}. 9.²² It is cruel to make Us g[uilt]y
of a Breach of the Laws—when We submitt
to them, & only desire to observe them
Obj[ect]ion. If We had got to Rhode Island—
We should not [*page break*] have regarded the
Laws
Answ[er]. Fraud not to be presumd—
Off[ice]rs there tho[ugh] not **so very** vigilant—
no doubt wo[ul]d do their Duty &c
This is to cond[e]m[n] for Crimes th[at]
might have been

==
But how have We acted here?
==

We made a fair Ent[ry] with the King's
Off[ice]r He accepted it. We informd
Coll[ecto]r of our Cargo The Quant[ity]
in the Libel taken from th[at] Inform[ati]on of
[his?] {Ours}.

== We consulted him never attempted
ag[ain]st his Will. A Doubtful Case We
respectfully determ[in]ed to act by his Advice
he seizd Us. We waited the Ev[en]t

== Is this violat[ing] Stat[ute]? Is this
cheat[ing] the King? Knaves act differently
==

Suppos[ing] the Eliza[beth] a French Vessel— Being
lawfully [pur]chasd forcibly brought in—
fairly enterd—honestly waiting for the
Coll[ecto]rs Determ[inati]on Coud She be
condemnd Moll. 9.²³

==
But being English— Shall the Want of a Reg[iste]r
destroy her

==
Redeemd to the Benefit of Engl[ish] Subj[ec]ts
==

Even willful &
volunt[ary] Neglects
This not to be
prevented.

Well known Max[im] of Chanc[ery] wh[ich] is
gov[erne]d by Civil Law th[at] Noth[in]g shall
occasion a forf[eiture] th[at] may be
compensated afterw[ar]ds— But here there is
no Inj[ury] only an Omission th[at] may be
supplied—

==

When is the
Coll[ect]or to have
the Reg[iste]r Vide
the 7 & 8 W. 3.

Does not accept[in]g the Entry cure any
Defects of this Sort? Supp[ose] We had
come in here voluntarily [*page break*]²⁴
Voluntarily (for We will put it as favourably
&c) & wo[ul]d not enter— V. 12 Car. 2. c. 19.²⁵
Entr[ing] to be before land[in]g how cou'd
Coll[ect]or demand Reg[iste]r— he cou'd
not Vide [Pa5?]²⁶

As Coll[ect]or has no Right to see our
Papers unless We woud land Goods—
noth[in]g but land[in]g w[ith]out [pro][per]
papers can make Us Subject to a forfeiture

==

We will not land Our Goods here— Can
the Coll[ect]or oblige Us? Are We obligd to
shew We are qualified to trade Whether We
will {trade or} not?

We say We have a Reg[iste]r Can he
[pro]ve th[at] We have not?

He Ought to have staid till We had landed
some Goods—& then seizd Us—for hav[in]g
no Reg[iste]r

Sev[er]al Inst[ances]
of Vessels hav[in]g
no Registers}
We must be lib[ele]d
on Stipulation²⁷

The [Pro]of woud then have lain on Us—
but to libel Us for hav[in]g no Reg[iste]r When
he has no Right to know Whether We have or
not is very singular

==

* The Reg[iste]r is
not the Auth[ority?]
It is only Evid[ence]
of it—& if
[par][ticu]lar
Circumst[ances]
deprive Us of it—

If We are an Engl[ish] built Vessel— We
are entitled to a Register where She is built—
& are not liable to a Forf[eiture] by the
Stat[ute] for Not {*}hav[in]g such a
Reg[iste]r—but for not being entitled to it

And it depends on Discretion to let Us go
on Stipulation

they dont deprive
Us of Our Right

==Sev[era]l Instances of Vessels not hav[in]g
Registers

==

[Par][ticu]lar hards[hi]ps in this Case as a
Redeemed Vessel— [Pro]curd from an
Enemy— Com[in]g from for[eign] Port &c

==

X What Inj[ury] to
Engl[an]d;

If the Stat[ute] has any mean[in]g any
Sense We are included w[ith]in the
Benefit— {^x} for if your Hon[our] is
convincd conscientiously th[at] [*page break*]
that this is an English built Vessel with wh[ich]
Reason can they desire You to condemn her
as is She had encroachd on the Priv[ilege]s of
Engl[ish] Shipping.

AD (PHi-Logan)

¹ Abraham Taylor (c. 1703–1772) was a member of the Pennsylvania Provincial Council and deputy collector of customs from 1744 to 1759.

² Brig: “A vessel with two masts square-rigged like a ship’s fore- and main-masts, but carrying also on her main-mast a lower fore-and-aft sail with with a gaff and boom” (*OED*).

³ Lat. he who sues for the king as well as himself. The complete phrase is: *qui tam pro domino rege quam pro se ipso in hac parte sequitur*.

⁴ 7 & 8 Will. 3, c. 22 (1696): “An Act for Preventing Frauds, and Regulating Abuses in the Plantation Trade.”

⁵ 12 Car. 2, c. 18 (1660): “An Act for the Encouraging and Increasing of Shipping and Navigation.”

⁶ As JD later indicates, specifically 15 Car. 2, c. 7 (1663): “An Act for the Encouragement of Trade.”

⁷ Recital: “The statement in a legal document that gives factual information relevant to the content or purpose of the document; the part of a legal document containing this statement” (*OED*).

⁸ Referring to 7 & 8 Will. 3, c. 22. See n. 4, above.

⁹ Lat. in the concrete.

¹⁰ Specifically, 3 & 4 Ann., c. 10 (1704): “An Act for Encouraging the Importation of Naval Stores From Her Majesty’s Plantations in America.”

¹¹ Sec. 19: “Provided always, That all such ships as have been or shall be taken at sea ... be specially registered ... before any such prize shall be allowed the privilege of an *English* built ship, according to the meaning of this act.”

¹² Carkesse 34 reprints various sections from 15 Car. 2, c. 7. See n. 6, above.

¹³ Specifically, 7 & 8 Will. 3, c. 22.

¹⁴ King William’s War (1689–97).

¹⁵ Lat. for those things that occur often, laws are adapted. The complete phrase is: “*ad ea quæ frequentius accidunt jura adaptantur*.”

¹⁶ Postlethwayt, *System* 266: “Although the *French King’s* Edicts, and Arrests, or Laws, are as strict as our Acts of Parliament, in Regard to the Prohibition of Foreigners from trading in their Islands and other Colonies in *America*; yet, such is their Policy, that their great Officers have discretionary Power to dispense with those Laws, where it shall appear for the Benefit of their Colonies, and without Prejudice to the Trade and Navigation of *France*. Whence it is they are permitted to exchange their surplus Rum and Malasses, with the *English*, for Cash, Horses, Shipping, Timber, and other Plantation Necessaries.”

¹⁷ Possibly a reference to “An Act for the Encouragement of Trade” (1722). Sec. 5 of the act stipulated that “all and every person and persons trading or that shall trade into this province, not being inhabitants, as aforesaid, upon his or their importing any goods, wares, merchandises or servants (salt, pitch, tar, tobacco and the produce of the lower Counties and West Jersey excepted) into any port of this province, before the same are unloaded or landed, shall by themselves, factors or agents, repair to the collector or officer aforesaid and deliver to him upon oath or affirmation ... a true invoice or manifest of all the goods, wares, merchandises or servants ... by them imported as aforesaid, and shall give security for or pay the duty thereon imposed.” See 3 *SALP* 363–64.

¹⁸ *Skinner* 293, *Luton v. Bigg*, Trin. 3 W. & M., B.R. (1690). The court resolved that “an Innkeeper is not such a Person who is described with the *Statute of Bankrupts* [34 & 35 Hen. 8, c. 4 (1542): ‘An Act Against Such Persons as Do Make Bankrupts’]; and also that the Plaintiff having a Share in a Ship, and a Stock there for Trade, it does not make him a Trader within those *Statutes*” (291). The court noted that “it is resolved in the Case of *Crisp* and *Prat*, that an Innkeeper ... is not a Trader,” despite the dissenting opinion that an innkeeper “gained his Living by Buying and Selling, that this made him a Trader within the Statutes, for he might be a Trader out of his Inn” (293).

¹⁹ The Downs: “The part of the sea within the Goodwin Sands, off the east coast of Kent, a famous rendezvous for ships” (*OED*).

²⁰ Justice, Appendix, 15–16: “A Merchant having imported *French* Wines into the *Downs* in a Foreign built Ship, the Proprietors thereof having not perform’d the Requisites enjoined by the said Act of Navigation [12 Car. 2, c. 18] ... and hath taken the said Wines out of the said Ship, and embarked the same into *English* built Barks or Hoys which have brought the same into the Port of *London*, or otherwise, intending to re-lade the said Wines upon some other Ship riding in the *Downs* bound for some other Foreign Parts. 1. *QUERE* Whether these Wines being so imported into the *Downs*, doth not render a Ship and Goods liable to Forfeiture. Admitting the *Downs* are not within any Port, as I suppose they are not, then I conceive the bare carrying of the Ship and Goods thither, makes no Forfeiture; for the Words of the Law are, that no Wines shall be imported into *England*, &c. into any Ship whatsoever, but what belongs to the People of *England*. ... I conceive the Ship not coming into any Port, nor into *England* ... is not forfeited within the Words of the Law.”

²¹ For 1 Coke, *Institutes* 49 b., see doc. 2:6, n. 2, above.

²² Justice, Appendix, 9: “I am of the Opinion, that a Ship bought beyond the Seas by one of his Majesty’s Subjects, and brought into a Port of *England*, ought not to pay Custom: For tho’ in a larger sense, Ships may be said to be Goods, yet the Word Goods is coupled with Merchandize, and no Man doth understand a Ship under the Word Merchandize, but rather such Goods or Commodities as are exported or imported in Ships.... Also, by the same Reason, Custom may be demanded for any Foreign Ship that comes into Port with Goods; for ’tis not the buying of the Commodity which makes it pay Custom, but the bringing it into Port, and landing part of the Cargo.”

²³ Justice, Appendix, 9: “*QUÆRE*. A Foreign Ship is brought in, and afterwards sold to one of his Majesty’s Subjects in Port, whereby it becomes a Ship of *English* Property: Whether the same, by Virtue of the fore-mentioned Clause, is not liable to pay *ad Valorem* [Lat. according to the value], as aforesaid. I think not ... yet seeing it is a Doubt to some, and seeing Prize Ships, and Ships made Free, do pay, (which in Reason seems the same, and I doubt as much of one as of the other) it may be fit to have a Tryal in this Case. The Practice of the Custom-house has been to demand the Duty of all Foreign Ships bought by *English*, and brought into any of the King’s Ports; and upon Prize Ships and Ships made Free, the Duty has always been collected; and upon several other Foreign Ships of *English* Property: But the last has not yet been brought to Tryal, or other Decision.”

²⁴ Here begins the only numbered page in the manuscript, numbered “(4).”

²⁵ 12 Car. 2, c. 19 (1660): “An Act to Prevent Frauds and Concealments of His Majesty’s Customs and Subsidies.”

²⁶ This possible reference to a fifth page suggests there were more notes than what remains extant.

²⁷ Stipulation: “A giving security for the performance of an undertaking” (*OED*).

1760

20

Notes for *Thomas Dunn v. James David*, February 1760

This document relates to a lawsuit in which George Read represented the plaintiff, Thomas Dunn, and JD represented the defendant, James David. The purpose of the lawsuit was to execute against James David to collect £40 posted by James David as bail for John David, an imprisoned debtor. The document was a petition to avoid the execution on the ground that in August 1758 the Court of Common Pleas sitting in New Castle County had ordered John David released from imprisonment by virtue of his having satisfied the requirements for release under a Delaware statute entitled “An ACT for the Relief of Insolvent Debtors within this Government.”¹ Dunn opposed allowing James David to avoid the execution, arguing, first, that he had not received notice of John David’s application to the court for release from imprisonment as contemplated by the statute and, second, that the bail posted by James David after a judgment against John David was rendered should be forfeited by John David’s failure to appear before the court in May 1758 to satisfy the judgment.²

<80. Feb. 1759.
Tho[ma]s Dunn³ }
v } Plea
Ja[me]s David⁴ }

fil[e]d Feb. 1.st 1760.>

[page break]

Thomas Dunn } And the said James David by John Dickinson
v } his Attorney comes & saith that the said
James David } Thomas Dunn Execution against him of the
aforesaid Forty Pounds to have ought not &c

Because he saith that by an Act of the Assembly of the Government of NewCastle Kent & Sussex on Delaware entituled An Act for the Relief of Insolvent Debtors within this Government⁵ {made at NewCastle [[the]] in the Twenty third {~~illegible~~} [of]} Year of his Majesty’s Reign } [~~illegible~~] {made at an Assembly held at NewCastle the [blank] day of [blank] in the Twenty third {Thirteenth} Year of the Reign of Our Sovereign Lord the King it is among} other things enacted That any person or persons being imprisond within any of the Counties of this Government for any debt Sum or Sums of money above Forty

shillings and not being above the age of Forty Years or not having a charge of small Children not of sufficient age to be bound out as Apprentices may at any succeeding Court to be held for the County where he or she is imprisond next after his or her Imprisonment exhibit to the Justices of the said Court upon Oath or Affirmation an Account of all their effects if any they have and to which they have any right in Law or Equity and the Names of their Creditors at whose Suit such person or persons are imprisond and the sums of money which they owe and when the same became due as far as their Knowledge does extend and shall by petition shew to the Court their Inability to pay the Debts for which such person or persons are imprisond and shall make an Assignment of their effects if any they have to any person or persons that shall be appointed by the Court in Trust for all his or her Creditors or for such of them as the said Court shall direct and shall signify his or her Willingness to make Satisfaction by Servitude for the Debt or Residue of his or her Debts according to the Judgment of the Court where such cause is depending or Judgment given in order as the Judgments shall be enterd against him or her and [page break] and Dignity of the debts if the Plaintiff or Plaintiffs will accept of the same and the said Court may & is thereby impowered and required to adjudge the said Debtor to serve his or her Creditors their Executors Administrators & Assigns accordingly Provided always that the time the defendant shall be adjudged to serve all his or her Creditors shall not exceed seven years in the whole. But if any of the Plaintiffs or Creditors will not accept of such manner of Satisfaction as aforesaid then and in such case the Defendant shall be discharged from the Judgment Suit debt or Demand of every such Plaintiff or Creditor so refusing⁶ As by the said Act amongst other things more fully & manifestly appears And the said James David further saith that {after the making the said Act and} before the Return of any Capias ad satisfaciendum⁷ against the said John David⁸ at the suit of the said Thomas Dunn issued to wit the Eighteenth day of August in the Year of Our Lord One thousand seven hundred & fifty [illegible]{eight} the said John David himself {a Prisoner} to John McKinley⁹ Esquire High Sheriff of the County af[ore]s[ai]d [blank] [illegible]{at t}he County af[ore]s[ai]d according to the form & effect of the Condition of the Recognizance aforesaid rendered {as by the Record thereof in this Court remaining appears} And so thereupon being imprisoned the said John David afterwards to wit in August Term in the Year of Our Lord One thousand seven hundred & fifty eight did exhibit to the Justices of the Court of Common Pleas then sitting at NewCastle County

aff[ore]s[ai]d his Petition shewing to the said Court his Inability to pay the debts for which he was imprisoned and signifying his Willingness to make Satisfaction by Servitude for the debt or residue of his debts according to the Judgment of the court in order as Judgments were enterd against him & Dignity of the debts And upon the said Petition it was ruld by the Court that the said John David {then being a Prisoner in the Gaol of the said County} should be brought into the said Court and the said John David being brought in did exhibit to the Justices of the [page break] said Court upon oath an Account of all his Creditors and the sums of money which he owed and when the same became due as far as his Knowledge did extend and did also upon his Oath declare that he had no Effects whatsoever to make {any} Satisfaction to his Creditors Whereupon it was so proceeded that it was Considered by the said Court then there And the said Court did thereupon order and adjudge him the said John David to serve John Stewart¹⁰ his Ex[ecuto]rs & Assigns at the Rate of Forty five shillings a Month Fifteen Shillings of which the said Court did order to be applied towards the Maintenance of his Wife and Family untill his Debt & Costs were fully paid & satisfied and that he shoud serve the rest of his Creditors at the same Rate & in the same Manner according to the Priority of their Judgments & the Dignity of their debts as by the Record of the said Proceedings in this Court now remaining more fully & manifestly appears And this he is ready to verify by the said Record {With this that the said James David will verify \emptyset } [*in left margin:*] { \emptyset that the said John David resided within this Government for the space of one Year next before his being arrested or imprison[ed] as aforesaid} Wherefore he prays Judgment if the said Thomas Dunn the Premisses aforesaid above by the said James David pleaded notwithstanding Execution against him the said James David for the {Forty Pounds <[illegible]>} aforesaid ought to have &c

John Dickinson
for the Defendant

~~With this that the said James David will verify that he resided~~

ADS (PHi-Logan)

¹ “An Act for the Relief of Insolvent Debtors Within this Government,” *LGD* (1752) 164–72.

² Thomas Dunn replication to James David’s plea, PHi-Logan. See also n. 3, below.

³ Thomas Dunn, a Christiana Bridge merchant, was elected sheriff of New Castle Co., Del., in October 1760 and served until 1763. He also served in the 1767 Assembly.

⁴ James David was probably John David’s brother. See also n. 7, below.

⁵ See n. 1, above.

⁶ *LGD* (1752) 174–75.

⁷ Lat. “after judgement, to imprison the defendant, until the plaintiff’s claim is satisfied” (*OED*).

⁸ Possibly John David (died c. 1772), of New Castle Co.

⁹ John McKinly (1721–1796), of Wilmington, Del., was a physician. In 1757 he became sheriff of New Castle Co., serving until Dunn’s election. During the Revolutionary War, McKinly served as Delaware’s first president after its separation from Pennsylvania.

¹⁰ Possibly John Stewart, a farmer of New Castle Hundred, New Castle Co. For the Aug. 18, 1758, order, see PHi-Logan.

21

**JD et al., “Report of the Committee appointed to Settle the Campaign
Accounts in the year 1759,” April 29, 1760**

<Report of the Committee appointed to Settle the Campaign
Acco[un]ts in the year 1759>¹ [*page break*]

We the Committee appointed by an Order of the House to settle the Accounts of the Campaign for the Year 1759 having carefully examind the said Accounts do report; That Six thousand eight hundred & eighty Pounds eighteen Shillings & five pence { $\frac{1}{2}$ } have by several orders of the Commissioners, been drawn out of the Sum of Seven thousand Pounds granted by the last Assembly to the King’s Use, & placd in the Loan Office for New Castle County;² which first Sum being deducted from the other, there remains in the hands of the Trustees for the said County,³ One hundred & nineteen Pounds one shilling & six pence half penny due to the Public.

Two thousand & five hundred Pounds were paid by the said Trustees to Captain James Young⁴ Paymaster of the Forces of this Government, who laid out Two thousand four hundred & thirty seven Pounds one shilling & nine pence, in paying the said Troops, & other necessary Expences; & returnd the Ballance of Sixty two Pounds eighteen Shillings & three pence to the Commissioners for New Castle County.

One thousand four hundred & eighty Pounds eighteen Shillings & five pence half penny have been drawn out of the said Seven thousand Pounds by Orders of John Finney & George Munro Commissioners,⁵ & properly applied to the Purposes in the Act abovesaid mentiond; except that Twelve pounds seven Shillings & eleven pence {part thereof} were paid to Lieuten[an]t W[illia]m McMechen’s for a Debt due to him from the Public for Services {as Surgeon} in the Campaign

April 1760

of 1758; and Eighteen Pounds & five Shillings paid to him as Ensign in the same Campaign. But allowing the {se} two Sums {,} [*illegible*] {&} deducting them together with other Sums due to him as Surgeon & Lieutenant, from the several Sums receivd by him, there remains in his hands, Thirteen Pounds & thirteen shillings due to the Public.⁶ There is an Apothecary's Bill still due to Sears & Parker Druggists in Philadelphia, for Medicines bought of them [*page break*] by the said McMechen as Surgeon to the Troops of this Governmen[t.] But the Account not having been exhibited to Us, We cannot say how much it amounts to. There is a Ballance due from the Public to Capt[ain] Vanbebber⁷ of Eleven Shillings {Pounds} eleven Shillings & four pence half penny. One thousand four hundred & fifty Pounds were paid by the said Trustees to Cæsar Rodeney⁸ & Joseph Caldwell Commissioners for Kent County, who have expended One thousand two hundred & three pounds nineteen Shillings & six pence in levying cloathing paying & subsisting Captain Battle's⁹ Company of Foot, to which Thirteen pounds & seven Shillings due to the Officers of the said Company for Subsistence being added, makes the Sum of Twelve hundred & seventeen Pounds six Shillings & six pence; and this last Sum being deducted from the Sum receivd by the said Commissioners, there remains in their hands a Ballance of Two hundred & thirty two pounds thirteen shill[in]gs & six pence due to the Public; to which We add Thirty six Pounds the Bounties repaid to the said Commissioners by six Men—who refusd to go the Campaign—& make the Ballance Two hundred & sixty eight Pounds thirteen Shillings & six pence.

One thousand four hundred & fifty Pounds were paid by the said Trustees to David Hall¹⁰ & Jacob Kollock Junior¹¹ Commissioners for Sussex County who expended One thousand three hundred & eighty ~~nine~~ Pounds nineteen Shillings & ~~£~~*illegible*{ten} Pence in levying cloathing paying & subsisting Captain Wright's¹² Company of Foot; which last Sum being deducted from the Sum receivd by the said Commissioners, there remains in their hands the Sum of One hundred & forty one Pounds & two pence due to the Public.

We do further report that the Commiss[ione]rs for New Castle have receivd Eighteen Pounds {returnd} Bounties of Soldiers who did not go the Campaign, & will probably receive more hereafter, as there were several other Men, who did not proceed with the Troops from New Castle. We do also report that there are five or six Suits of Soldiers Cloaths belonging to this Government, in the hands of George Munro.

We do further [page break] Report that the several Sums of Money laid out & expended as aforesaid by the respective Commissioners amount to Six thousand four hundred & forty four Pounds six Shillings & six pence half penny; which being deducted from Seven thousand Pounds, there remains the Sum of Five hundred & fifty five Pounds thirteen Shillings & five pence half penny; to which adding the returnd Bounties receivd by the Commissioners of New Castle & Kent, they make in the Whole the Sum of Six hundred & nine pounds thirteen Shillings & five pence half penny, the Ballance due {to the Public} from the Trustees of the Loan Office for New Castle County, & the Commissioners of this Government, appointed for laying out the Seven thousand Pounds granted in the Year 1759 to the Kings Use, according to the several Accounts abovementiond.

All which is humbly submitted to the House by

John Dickinson

Evan Rice¹³

Benja: Burton¹⁴

April 29th 1760

ADS (De-Ar)

¹ With the exception of this docketing, this document is in JD's hand.

² See the May 7, 1759, "Act for Re-printing, Exchanging and Re-emitting Twenty Thousand Pounds of the Bills of Credit of this Government, to be lett out on Loan; and for striking the further Sum of Seven Thousand Pounds in such Bills, and giving the same to his Majesty's Use, and for providing a Fund for sinking the same," 2 *LGD* (1763) 22–40.

³ William Patterson (d. 1794), Richard McWilliam, and Evan Rice were the trustees for New Castle Co. appointed in the act. Patterson had previously represented New Castle Co. in the Assembly. For McWilliam, a Delaware judge, see doc. 2:94, n. 2, and for Rice see n. 13, both below.

⁴ Capt. James Young (1729–1779), of Philadelphia, was commissary general and paymaster of Pennsylvania troops between 1756 and 1765 and was Pennsylvania wagonmaster general during the Revolutionary War.

⁵ John Finney (c. 1690–1774) was a physician who served multiple terms representing New Castle Co. in the Assembly. George Munro (d. 1786) represented New Castle Co. in the Assembly from 1764 through 1767. They were two of the six men (two from each county) appointed as commissioners to receive payments from the trustees appointed from the counties and "order and appoint the Disposition of the said Sum of *Seven Thousand Pounds* arising by Virtue of this Act, for and towards the Levying, Cloathing and Paying" the Delaware forces created under the act. See 2 *LGD* (1763) 37.

⁶ William McMechen (1735–1807) was a physician of Christiana Hundred, New Castle Co. In 1789 he became one of the founding members of the Medical Society of Delaware. For some of McMechen's accounts relating to an expedition to Pennsylvania, see Leon deValinger, Jr., *Colonial Military Organization in Delaware, 1638–1776* (Wilmington, Del.: Delaware Tercentenary Commission, 1938), Appendix C.

⁷ Probably Henry Van Bebber (d. 1778), of New Castle Co. He was a yeoman and a lieutenant in the 1758 campaign during the French and Indian War.

⁸ Cæsar Rodney's father, Cæsar (1707–1745), and grandfather, William (1660–1708), spelled their surname “Rodeny.” For Cæsar Rodney, see doc. 2:11, n. 10, above.

⁹ French Battell (1725–1782), a Dover, Del., innkeeper, had been a Delaware militia officer as early as the 1747–48 campaign. In 1775 he was elected a major of the Kent Co. militia. See *Pennsylvania Packet*, June 19, 1775.

¹⁰ David Hall (died c. 1796), of Lewes, Del., represented Sussex Co. in the Assembly almost every year from 1755 through 1774, serving as speaker in 1771.

¹¹ Jacob Kollock, Jr. (d. 1790) represented Sussex Co. in the Assembly from 1755 through 1770.

¹² John Wright was a lieutenant in the 1758 campaign.

¹³ Evan Rice (1720–1772) represented New Castle Co. in the Assembly from 1753 to 1772 and was president of the Court of Common Pleas for several years.

¹⁴ Benjamin Burton (1718–1783) represented Sussex Co. in the Delaware legislature from 1752 through 1774.

22

To Thomas McKean, June 16, 1760

Dear Sir,¹

I rec[ei]ve[d] your Favour by M^r. Boggs, & am convinc'd by the Force of your Arguments, that it is better for Me to go into the Jerseys, than to Heaven; or at least, that they are the same thing.²

If I could persuade Myself that my Rhetoric would have the same weight with You, that your's had on Me, I would endeavour to prove that the 23.^d or 24th of this month will be too late to go—

I engag'd some Time ago to wait on M^{rs}. Cadwalader³ to Trenton—& as She sets off tomorrow Morning—I shall be oblig'd to attend her— I made this Engagement the more willingly, because I did not doubt but You would have been here by this time, & that I should have had your Company—

However Sir, if You have as much Pleasure in being with Me, as I have when with You, You will endeavour to come up sooner than You mention— If You do not find this selfish Motive sufficient to move You; let a more generous one prevail; and come to make that Addition to my Happiness which it is in your Power to make—

If You come, You may command Me as much as Grace— Either to Brunswic, Bethlehem, Shrewsbury⁴—or any where els[e]

I design to stay about ten Days in the Jerseys— Sett of as soon as You can, & oblige

Your affectionate Friend &
very h[um]ble Serv[an]t

John Dickinson
Philad[elphi]a June 16th 1760

ALS (PHi-TMP)

¹ Thomas McKean (1734–1817), of Chester Co., Pa., was JD’s lifelong friend. He was a New London Academy graduate and legal apprentice of David Finney. In 1754 he joined the Delaware bar, and a year later, he expanded his legal practice into Pennsylvania. He was admitted to practice before the Pennsylvania Supreme Court in 1757, and in 1758 he was admitted to the Society of the Middle Temple as a specialiter, enabling him to become a barrister without attending. He later served in the Continental Congress, signing the Declaration of Independence and the Articles of Confederation, and was the second president of Delaware. In 1777 he became chief justice of the Pennsylvania Supreme Court, an office he held until 1799, when he was elected to Pennsylvania’s governorship.

² Not found. Possibly James Boggs, of Chester Co., Pa.

³ Hannah Lambert Cadwalader (1712–1788) was JD’s aunt and the wife of his uncle and prominent physician, Thomas Cadwalader (1707–1779).

⁴ Here, JD is probably referring to New Brunswick, N.J., about 56 mi. northeast of Philadelphia; Bethlehem, Pa., about 55 mi. northwest of Philadelphia; and Shrewsbury, N.J., which is about 80 mi. northeast of Philadelphia.

23

**[JD?], Obituary for Samuel Dickinson,
The Pennsylvania Gazette, July 24, 1760**

“On Sunday, the Sixth of this Month, departed this Life in the Seventy-first Year of his Age, SAMUEL DICKINSON, Esquire, first Judge of the Court of Common Pleas, in Kent County, on Delaware; and, on the Wednesday following, was interred in the Burying Ground belonging to the Family, near Dover,¹ attended by most of the principle Inhabitants of the County.

He was a Gentleman possessed of so many worthy and valuable Qualities of Disposition and Understanding, that if Justice only should be done to his Merit, Strangers to his Person would imagine the Character to be drawn by some near and afflicted Mind; and to those who had any Intimacy with him, nothing more than that is necessary to make them preserve the Remembrance of his Virtues, and to render his Memory ever dear to them.

The latter Part of his Life convinced all who saw him frequently, that such Things as seem to be the greatest Evils cannot make a GOOD MAN miserable even here; for having supported a tedious State of uncommon Pain and Sickness with so much Resignation and Patience, as

November 1760

to be always remarkably agreeable in Conversation, and very often acknowledging his Gratitude to the Supreme Being, for the Happiness he enjoyed in this Condition, he left this World with a Cheerfulness becoming the blessed Hope he felt, and expressed, to his last Moments, of entering into another infinitely better.”

¹ At Poplar Hall, the Dickinson plantation in Kent Co., Del.

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**Election Announcement: Representative to the Assembly of the
Three Lower Counties from Kent County,
The Pennsylvania Gazette, October 9, 1760**

For Kent County. Representatives, John Brinkley, John Dickenson, Joseph Caldwell, James Train, Vincent Lockerman, Timothy Hanson.

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**Election Announcement: Speaker of the Assembly of the Three Lower
Counties, *The Pennsylvania Gazette*, November 6, 1760**

JD was elected speaker of the House on October 20. During his tenure, most of the four pieces of legislation passed were routine (see the Appendix). One act, however, was noteworthy. On October 30, he passed “A Further Supplement to the Act, Intituled, ‘An Act for the better Regulation of Servants and Slaves within this Government.’” This bill appears to be unique in colonial North American legislation. It provided for recourse to law by “Children of white Women by Negro or Mulatto Fathers” who have been illegally “held and detained as Servant, or as Slaves, by Persons pretending to be their Masters and Mistresses.” As the colonies experienced a shortage of labor because of a decrease in the importation of slaves during the French and Indian War, these people were “frequently sold as Slaves ... to Persons who reside in other Governments, with a fraudulent Design to prevent their procuring Proof of their being entitled to their Freedom.” The Assembly found that “the Laws of this Government are defective in not prescribing any Mode for settling, and determining, in a short and summary Manner, the Claim, or Right, of any Persons pretending to be entitled to their Liberty.”

This law not only provided ample remedies for the victim to obtain liberty and seek restitution, but also stringent penalties for the crime

and for officials who enabled it. It stipulated that the Court of Common Pleas could hear petitions “by any Person, or his or her Parent, or Friend” that an individual was being held illegally. The pretended master or mistress would then be summoned to court and the case determined regardless of whether they appeared. If the enslaver hid the individual, they would be arrested and held until the individual was freed. If the sheriff refused to detain the enslaver, he would be fined £100, which would be paid to the victim upon a lawsuit. The act further provided that the victim could then bring an action against the enslaver for trespass and false imprisonment, or any other action that was warranted, with the enslaver paying court costs or facing distraint of property or detention. Should the enslaver sell the victim into another colony, they would be fined £100, to be divided by the government of the Lower Counties and the victim.

Although it is unknown what role JD may have played in crafting this legislation, of assemblymen, including the few others with Quaker ties, he was the only one known to have established a record of working against the institution of slavery and for securing greater rights and opportunities for African Americans.¹

At a Meeting of the ASSEMBLY of the Three Lower Counties, lately held at New-Castle, JOHN DICKINSON, Esq; was chosen Speaker for the ensuing Year.

¹ “A Further Supplement to the Act, Intituled, ‘An Act for the Better Regulation of Servants and Slaves within this Government,’” 2 *LGD* (1763) 51–74.

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Commonplace Book I, [c. 1760]

JD composed these notes almost verbatim from the first eight chapters of John Campbell’s *The Present State of Europe; Explaining The Interests, Connections, Political and Commercial Views Of its Several Powers*, first published in London in 1750. Campbell (1708–1775) had published widely in literature and history since at least 1736 and *Present State of Europe* was among his most popular works, receiving domestic and international acclaim through its analyses of domestic and foreign affairs. Given that JD copied much of this document, annotation has not been added; readers should consult the index for more information.

The universal Principles of Policy or the
Political Vowels
 are

Campbell's Present
 State of Europe.

1st. Religion. 2.^{ly} The Natural Grounds of Fri[e]nds[hi]p or Alliance:
 As where Nations are gov[erne]d by the same Family— From Inter-
 marriages— From having like Views— Or Similarity of Government
 3.^{ly} Situation. 4.^{ly} The relative State of a Nation— The Courage of a
 People ris[in]g with Success & fall[in]g with Losses—Factions—or
 other internal Distress. 5.^{ly} Claims or Pretensions—wh[ich] occasion
 Diffidence[.] pa. 11. 12.

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Suppos[in]g the world divided into 300 parts— Asia will contain of
 these 101—America 90—Africa 82—& Europe 27. Europe exceeds
 Am[erica] & Af[rica] in number of People—& count[in]g her Colonies
 exceeds Asia too.

The [Pro]portion between Papists & Protestants in Europe in point of
 Territor[y] is 8 to 7—but the Numb[er] about equal—or the
 [Pro]testants rather exceed.

Proportion between G. Britain & the sev[era]l Powers of Europe

Russia 10, 13 Germany 3, [~~illegible~~]{53} Sweden 3, 63 Pol[an]d
 3, 39 France 1, 7 Spain 1, 81 Turkey 3, 18 Portugal 0, 36
 Span[ish] Netherlands 0, 18 United Prov[in]ces 0, 11 Switzerland
 0, 17 {17. 18.} Denmark 1, 49 Italy 1, 19. [*page break*]

If the **Shipping** of Europe is div[ide]d into 20 parts: Great Britain &c
 has 6 The united [Pro]vinces 6 The Subjects of the Northern
 Crowns 2 The Trad[in]g Cities & Seaports of Germany & Austrian
 Netherlands 1 France 2 Spain & Portugal 2 Italy & rest of Eu-
 rope 1. 21.

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Besides the general **Ballance of power** there are 3 part[icu]lar ones—
 That of the North—where Russia is to be feard—That of Germany—
 wh[ich] depends on pois[in]g the two great houses of Austria & Bran-
 denburgh—& that of Italy—where Austria & Bourbon should be kept
 in poss[ess]ion of their Dominions in that Country. 27.

Present State &c of **Russia.**

Peter the Great born 11 June 1672 died in the beginn[in]g of 1725.

The Empress Catherine died May 1727.

Peter II. Grandson of Peter the Great died 19 Jan[ua]ry 1730.

The regular Succession was now at an End— Accord[in]g to the Emp[ress] Catherine's Will—her eldest Daugh[te]r Anna Petrowna {Dutch[ess] of Holstein Gottorp} shoud have been calld in—but She dy[in]g the year after her Mother—leav[in]g a Son but 2 years old— The Nobility pretended the late Emp[er]or had appointed Anna Iwanowna Dutch[ess] of Courland—youngest Dau[ghte]r of the Emp[er]or Iwan or John elder Brother of Peter the Gr[ea]t.

But then She had an elder Sister Catherine Iwanowna married to the Duke of Mecklenburg: Therefore the Empress brou[gh]t her Niece the Princess Anne of Mecklenburg to Court, & marr[ie]d her to Prince Anth[ony] Ulric of Brunsw[ick] Bev[eren.] [*page break*]
The Empress died in Oct[obe]r 1740 hav[in]g appointed Iwan the Son of the Princess Ann her Successor & his Father & Mother his Guard-ians.

On the 6th of Dec[embe]r a Revol[uti]on happend & Eliz[abeth] Petrowna younger Daug[h]te[r] of Peter the Great was placd on the Throne.

She appo[inte]d her Nephew the Young Duke of Holstein her Heir Apparent— He was born 10 {21} Feb[rua]ry 1728 & is calld Charles Peter Ulric.

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Peter the Great designd to restrain the Power of his Succ[ess]ors by appoint[in]g a Senate but the Gov[ernmen]t is quite absolute.

It is the Int[eres]t of Russia to be on good terms with the Swedes & Poles— More [par][ticu]larly with Austria—for this will [pro]tect her from the Turks. {The Maritime Powers are her natural Allies.}

If the Grand Duke shoud leave issue—there may be some disturb-ance about the Succession.

Present State &c of **Sweden.**

Gustavus Adolphus came to the Crown 1611.

Sweden was then the lowest & Weakest K[ing]dom in the **North:** He left it the greatest.

He recov[ere]d the Fortresses wh[ic]h had been taken by the Danes: Took great part of Livonia & Ingermania from Russia & the City of Kexholm: The Remainder of Livonia & the import[an]t City of Riga

from the Poles: Stetin—great part of Pomer[ani]a & other places from Austria.

He was killed at the Battle of Lutzen 16 Nov[ember] 1632. [*page break*] He was succeeded by his Daug[h]te[r] Christina 6 y[ear]s old: [*illegible*] Who by the Treaty of Munster had Pomerania—Bremen & Verden—{The Isle of Rugen} the City of Wismar—& a Vote in the Diets of the Empire & the Circle of Lower Sax[on]y allowd her.

She resignd the Crown to her Cousin Cha[r]le[s] Gustavus May 1654 reserv[ing] a Pension & died at Rome 9 Ap[ri]l 1689.

Charles X. was Nephew to Gust[avus] Adolp[h]us by his Sister Catherine married to John Casimir Prince Palatine of the Rhine.

This great Prince after various Successes in War ag[ain]st Poland Russia & Denmark died 13 Feb[rua]ry 1660: leav[ing] his Son by 5 years old.

Charles XI. was a gov[erne]d in his Minority by his Mother who was Sister to the Duke of Holstein—& a very wise Princess.

She made a very advantageous Peace with Poland by the Treaty of **Oliva**—

by wh[ic]h the K[ing] of Poland renouncd his claim to the Crown of Sweden & the Republic all her Rights to Livonia.

Soon after Peace was made with the other Powers.

In 1680 he married Ulrica Eleanora Daug[h]te[r] to Fred[er]ic[k] II. of Denmark—& applied himself very closely to the Gov[ernmen]t of his Kingdom— But on Denmarks seising Holstein—he obligd him by the Treaty of Altena 10 June 1689 to restore it to the Duke.

In the first gen[era]l War ag[ain]st France he lent the Dutch 6000 men—but w[ith]out declar[ing] War ag[ain]st Louis XIV. Who was so well satisfied with him that he forbad all French Privateers molest[ing] Swedish Ships.

He died Ap[ri]l 5—1697—aged 42. He left 3 Children— Hedwig Sophia Eleanora who married the Duke of Holstein Gottorp [*page break*] Ulrica Eleanora—married to the Hereditary Prince of Hesse Cassel—& a Son.

Charles XII. was gov[erne]d by his Grandmother assisted by 5 Senators—who were to govern till he was 18: But the States declar'd him Major before 16.

Fred[er]ic[k] IV. of Denmark August[us] II of Poland & Peter the Great encouragd by his Youth combind ag[ain]st him.

But Cha[r]le[s] penetrat[ing] their Scheme—landed in Zeal[an]d besiegd Copenhagen & constraiend Denmark to relinquish the Confed[er]acy by the Treaty of Travendahl 8 Aug[us]t 1700.

The same year he relievd Narva & on 20 Nov[embe]r gaind the most unequal Battle in Modern History.

On 5 May 1704 he obligd the Poles to chuse Stan[islau]s Leszinski—Palatine of Posnania—their King: & imposd very hard Terms on Augustus by the Treaty of Altranstadt w[ith]in 2 miles of Leipsick.

In 1708 Cha[rle]s held the Ballance of Europe. On 27 June 1709 he was defeated at Pultowa: & in Nov[embe]r 1714 returnd into his Dominions: Was killd before Frederickshall in Norway 1 December 1718.

Ulrica Eleanora his Sister was chosen Queen by the States—& her [H?]{H}usb[an]d Generalissimo. In 1720 hav[ing] embracd the Lutheran Religion he was raised to the Throne.

In June 1720 Peace was made with Denmark 11 Jan[ua]ry 1721 with Prussia & 19 Aug[us]t with Russia[-?] {at Newstadt.} By these Treaties Sweden recov[er]ed part of Pomerania & City of Wismar But Prussia kept the Dutchy of Stetin & [page break] Hanover—Bremen & Verden. The Czar kept his Conq[ues]ts.

Peace was made with Poland in 1729.

On 6 June 1739 died Cha[rle]s Duke of Holstein Gottorp

In July 1741 broke out the War with Russia, in wh[ich] the Swedes were every where unsuccessful.

By the Treaty of Abo in 1742 under the Mediation of King George Russia consented to restore all her Conq[ues]ts in this War except a small District in Finland—if the States wou[ld] elect Adolphus Fred[erick] Bishop of Lubec & Adm[inistrat]or of Holstein—Successor to the Crown—the Young Duke of Holstein whom they had elected—being appo[inte]d Successor to the Czarina.

He was accord[ing]ly elected 23 June 1743: The King 5 Ap[ri]l 1751.

Adolphus Frederick—the [pre]sent Monarch.

The States set once in 3 years or oftner if necessary. The Nob[ility] & Gentry are represented by one of each Family, of wh[ich] there are above 1000—& in their Chamber sit & vote the Col[onel] Lieut[enan]t Col[onel] Major & one Capt[ain] of each Regim[en]t.

The Clergy are represented by the Bishops—Super Int[en]d[an]ts—& one [Per]son chosen by every ten Parishes—these make about 200.

The Representatives of the Burghers are chosen by the Magistrates & Common Council of each Corpor[at]ion— 150—

The Peasants of each District chuse one to represent them of their own Quality—these make about 250.

These last are counted the Country or Landed Interest & therefore much respected. Each Order has a Negative Vote—but in their respective houses a Majority determines. [*page break*]

The Military Officers are for Life & have Estates in Land wh[ic]h are let at Rents equivalent to their Pay—A Col[onel] about £300 Sterling a year. No Religion tolerated in Sweden but the Lutheran—there[fore] the Clergy very respect[able].

The Senate appoints Col[onels] & other Superior Officers—direct the Revenue—must consent to [Pro]clamations & all Acts of State—& in case of the King's Absence from his Dom[ini]ons—have all the executive Power in their h[an]ds.

It is the Interest of Sweden to be well with Turkey in order to guard ag[ain]st Russia Her Connexions with France are injurious—creat[ing] greater Expences than her Subsidies—& Austria now declind. Consider[ing] the Influence of their Squadrons in the Baltic—the Friends[hip] of the Marit[ime] Powers is of great Conseq[ue]nce to Sweden.

Sweden is highly consid[er]ed by the [Pro]test[an]t Powers in Germ[any].

She may now do one of these 3 things. 1. Attend to restor[ing] the inward Strength of her People—increas[ing] Manufactures & enlarg[ing] Trade—this the safest surest & speediest Way— 2. She may attach herself to Russia in Support of the House of Holstein—& thus extend her Trade to Persia. [*torn*] 3. She may form a Ballance ag[ain]st Russia by join[ing] with Denm[ark] Prussia France & [per]haps Poland.

Present State &c of **Denmark**.

The present Royal Family was raisd to that Dignity in 1523—when the People driv[ing] out Christiern II. chose his Uncle Frederick Duke of Holstein King—who died 1532{3}.

Christiern III. his Son succeeded him— In his time the Lutheran Religion was establishd there by Law. [*page break*]

Frederick II. succeeded his Father in 1558— His Son

Christiern IV. succeeded him & he left the Crown to

Frederick III. his Son in 1649— To whom the Commons of Denmark obligd the Nobility Senators & Clergy to surr[ende]r their Liberties in 1660— So that from the most limited & in some measure elective Monarchy—it became the most absolute in Europe & that by Law.

Christiern V. his Son succeeded in 1670— His Son **Frederick IV.** began his Reign in Sept[ember] 1699.

All these 5 Kings carried on War ag[ains]t Sweden.

The Last by the Treaty of Travendahl allowd the D[uke] of Holstein the same Rights with other Sovereigns: But had the Dutchy of Sleswic[k] guarr[antee]d to him by Eng[lan]d & France.

Christiern VI. his Son succeeded him in Oct[ober] 1730.

This wise Prince by his prud[en]t & pacific yet spirited Conduct made his people very happy.

Frederick V. his Son succeeded him 26 July 1746 aged 23— He has a Son by Louisa of Great Britain born 18 Jan[ua]ry 1749. By pursu[ing] his Father's Steps the Shipp[ing] of Denm[ark] & the Revenues of the Crown are doubled— His Revenues are between 2 & 3 millions of Rix Dollars.

It is the Interest of Denmark & Sweden to be at peace to guard ag[ains]t Russia— So She shoud with Germany & [par][ticu]larly with the Marit[ime] Powers.

Denmark may carry on an advantageous Trade by furnishing France with dried Fish—Beef—Butter {&c} wh[ic]h the French have allowd with [par][ticu]lar Priviledges. [page break]

The present State &c of **Poland.**

After the death of John Sobieski—Augustus Elector of Saxony was chosen King in 1697: But in 1706 was reducd so low by Cha[rle]s XII. of Sweden as to write a Letter of Felicitation to Stanislaus who had been crown'd at Warsaw 4 Oct[ober] 1705. In 1709 Aug[ustu]s resum'd the Sover[ei]g[n]ty.

The chus[ing] Aug[ustu]s instead of Prince James Sobieski was the first Instance in Poland of the deceasd King's Son being set aside. Aug[ustu]s died 27 January 1733.

Frederick Augustus his Son was chosen King Sept[ember] 23. 1733, in the 47 Year of his age.

The Distinctions in Poland are Peasants—Citizens—& Nobility. The first belong absolutely to their Lords: If a Nobleman kills his own slave—he pays a small fine—if another's—the Value to the Master. If Lords ravish their Tents Wives or Daughters they may leave their Service—being ordaind Priests enfranchises them.

All the Polish Gentry are equal by Birth & they despise Titles: but are little better than Highland Chiefs.

There are 17 Ecclesiast[ica]l Senators & 128 lay. The Senators are the Gov[ern]ors of [par][ticu]lar Districts. The King can do nothing w[ith]out their Consent. 4 always attend him.

The King must call a Diet once in 3 years. The Nob[ility] send Deputies—Poland 178 & Prussia 70— These must be chosen unanimously & not by a Majority of votes.

In the Diet every Deputy has a Negative Vote. The Diet can never set above 6 weeks: & if Business cannot be done in that time they break up in Confusion as in 1649 when the Turks & Cossacks had overrun the whole K[ing]dom almost. [*page break*]

The elected Prince before he is recognizd must swear to the Pacta conventa wh[ich] contains their Constitution.

The Principal Points are “That he will not appoint a Successor—nor coin money—nor declare War—bring in for[eig]n Troops—send any out—or levy new forces—w[ith]out the Diet’s consent— That he will ratify all Treaties with for[eig]n Princes—th[at] all Field Officers shall be Poles—& all Officers of the Guards—& all swear to be subject to the Grand Marshall—th[at] no Strangers shall have Offices or Dignities—th[at] he will build no fleet w[ith]out the Senate’s Consent—borrow money w[ith]out the Diets—nor diminish the Publick Treasury. {He swears to [pro]tect the Romish [Pro]testant Greek & Jewish Religion[s].}

The King bestows all Employm[en]ts Ecclesiastical Civil & military but can resume none— His Revenue is about £150000 Sterling a year.

The Alliances of Poland with Russia & Germany secure her from the Turks & Tartars— It is their Interest to live on good terms with Prussia.

At present they are—& are likely to continue distracted with Intestine Feuds.

The present State &c of **Prussia**.

The Princes of the House of Brandenburgh have been remarkable for Probity Learning Eloquence Wisdom & Courage.

John Sigismund embracd & introduc’d in his Dom[inion]s the [Pro]testant Religion. He married Anne eldest Daughter of Albert Fred[eric]k of Prussia & Mary Eleanor eldest Sister of the last Duke of Cleves. On the death of this Duke—he with the Elector Palatine took poss[ession] of Cleves; [*page break*]

And on the death of his Father in Law he took poss[ession] of Prussia He died in 1619 after reign[ing] 12 years.

George William his Son joint with Gust[avus] Adolphus.

Fred[eric]k William II. of that name succeeded his Father in 1640

By the Treaty of **Munster** the Swedes were to give up to him Pomer[ani]a wh[ich] by virtue of a Treaty made with the ducal house of Pomer[ani]a ought to have come to him on that house being extinct by the death of Bogislaus 14 in 1637 But the Swedes delayd it till 1653—& then the Elector was obligd to give up Swedish Pomerania the Isle of Rugen & sev[er]al Bailiwicks As an Equival[en]t tho[ugh] far short he had the Archb[isho]p[rick] of Madgeb[our]g the Bishopp[rick]s of Halberstadt & Camin & Princ[i]p[ali]ty of Minden.

By a treaty with Poland—he got the fiefs of Lawenb[er]g Botow & Town of Elbing.

He was on the point of annex[in]g the princip[al]l[i]ty of Querfurt to his Dom[ini]ons as a fief of Madeburg—but being contested in 1687 he accepted the Baliw[ic]k of Bruck in Satisf[acti]on.

His first Wife was Daugh[te]r to Henry Fred[er]ick Prince of Orange from whence he claimd a Right to that Succession

Fred[er]ick III. his Son by a Daugh[te]r of the Duke of Holstein Glucksburg succeeded him 19 April 1688.

He [pro]curd the [Pro]vostship of Quedlimburg the Bailiw[ic]k of Petersb[er]g & sev[er]al other places from Saxony instead of some claims.

In Jan[ua]ry 1701 he was crown'd King at Koningsberg. By the Treaty of Peace with France—he obtaind the Lordships of Neufchatel & Valingen for his Pretensions to Orange: & was confirm'd in Upper Guelderland—the Country of Kessel & Prefecture of Kriekenbeck.
[page break]

Frederick William his Son engag'd in a war ag[ain]st Sweden but by a treaty at Stockholm 20 Jan[ua]ry 1720 obtaind the City of Stetin—the district between Oder & Rhine—the Islands of Wallin & Usedom—& the towns of Dam & Golnow: All wh[ich] Places he had very fair Pretensions as Successor to the Dukes of Pomerania. This gaind him a free Communic[ati]on with the Baltic. By the Treaty of Berlin 13 May 1732 he settled his Dispute about the pr[incipa]l[i]ty of Orange with the Prince of Nassau Frize who claimd under the Will of William 3.^d King of England.

By this Treaty he obtained the Princip[ali]ty of Meurs—the Co[un]ty of Lingen—the district of Montfort—the Lordsh[ips] of upper & lower Swaluwe—Naltwick—Hoenderland—Wateringen—Orange Polder—Gra[illegible]{v}esand—& Turnhout—the Barony of Herstal—the house at the Hague call'd the Old Court—& the house of Honslaardyck. He died 31 May {1740.}

Charles Frederick his Son was born 24 Jan[ua]ry 1712

In his Father's Lifetime he married Elizabeth Christina of Brunsw[ick] Wolfenbuttle born 8 Nov[ember] 1715.

He relinq[uishe]d his Barony of Herstal to the Bishop of Liege for {200000 Duc[at]s}.

The House of Brandenb[urgh] had a fair title to the Princ[i]p[al]l[i]ty of Jagerndorf or Silesia wh[ic]h the Emp[er]or Leopold had united to Bohemia but by a Treaty in 1686 the Elector Fred[erick] 2.^d renounced his pretensions in consid[erati]on of the Territory of Schwibus However the Emp[er]or by a clandestine treaty with the Electoral Prince afterw[ar]ds King took advantage of some family disputes—& obligd him to subscribe an Oblig[ati]on to give up Swibus for a small Sum of money when in his Power When he became Elector he gave it up but woud not confirm his Father's Renunciation but left it to his Posterity to [pro]secute his Rights to Silesia—as the House of Austria had taken away the Equivalent. [page break] To vindicate these Rights the King of Prussia marchd into Silesia in Dec[embe]r 1740.

On 10 April 1741 he gaind the bloody battle of Molwitz over the Austrians commanded by Field Marshal Count Nieupeerg.

The next year hav[ing] marchd into Bohemia to the Assist[ance] of his Allies the French Bavarians & Saxons—after being basely deserted by them on May 24—1742 he fought the famous Battle of Czaslaw—in wh[ic]h he also claimd the Victory But both [Par]ties being now tir[ed] on 11 June a treaty was made at Breslaw in Silesia by wh[ic]h the greatest part of that Dutchy & the whole County of Glatz were yielded to him.

Afterw[ar]ds entr[ing] into the League of Frankfort in support of the Emp[er]or Charles VII. he invaded Bohemia & took Prague 6 Sept[ember] 1744 wh[ic]h obligd Prince Charles to march from the Rhine to the Elbe

The King retreat[ing] was at length on 4 June 1745 obligd to fight at Friedberg—where he gaind a complete Victory. On the 30 Sept[ember] the Austrians being joind by the Saxons by a forcd march suprizd the King near Stadentz & plunderd his Baggage

But by his inimitable Skill he recov[ere]d his order & obtaind a glorious Victory.

In the Winter the old Prince of Anhalt Dessau with a Prussian Army enterd Saxony—took Leipsick & on 4 Dec[embe]r 1745 defeated twice his numbers of Austrians & Saxons & took Dresden.

In the midst of these Successes he made a fair & equitable Peace—Silesia being confirmd & the Saxons giv[ing] him a Million {of Crowns.} [*page break*]

It is his Int[er]est to keep the Ballance of the North exactly even

He must therefore attend to Sweden & Denmark but more [par]ticularlly to Russia

He ought to consider himself as the [Pro]tector of the Germanic Constitution & of the [Pro]test[an]t Religion.

He has in his hands the Ballances of the North—of Germany—& the great Ballance of Power ag[ainst] France. He woud not have joint with France last War but on his Offers to Vienna being rejected: And now may be detachd from her.

He is aim[ing] to be a maritime Power & will endeavour the first good Oppor[tunity] to get a greater Sea Coast—wh[ic]h consider[ing] the Situation of his Dom[ini]ons—may be in time 4 or 500 miles.

[*lower half of page blank*] [*page break*]

Present State of the house of **Austria**.

Rodolph Count of Hapsbourg is counted the founder of this Fam[ily] because he was the first Emperor of it being elected in 1273—to succeed Henry 2.^d He introduced the German Lang[ua]ge instead of Latin in all Acts of State & Law [Pro]ceed[ing]s.

1291 on his death Adolphus of Nassau was elected Emp[er]or & soon after Albert Son of Rod[olph]

1298 Albert killd his Rival in battle with his own hand

Refus[ing] to put his Nephew John Duke of Swabia Son of his Brother Rodolph in poss[ession] of his Dom[ini]ons he was assassinated by him 1 May 1308.

This house did not recover the Imp[er]ial Dignity for 130 Years after his death till

Albert surnamed the Magnanimous having married the Emp[er]or Sigismunds Daughter—was elected Emp[er]or 26 June 1438. He left a Posthumous Son Ladislaus who died at 18 not w[ith]out Susp[ici]ons of being poisond by

Frederick the Peaceable his Cousin who succ[eede]d Albert in 1440. He was succ[eede]d by his Son

Maximilian I. in Aug[ust] 1493. He marr[ie]d Mary Dutch[ess] of Burgundy by whom the Family got the Austrian Netherlands. This Lady brought the large Lip into the Fam[ily]. In 1495 he establishd the Imp[er]ial Chamber for decid[ing] Disp[utes] among the pr[ovince]s. He died 12 Jan[uary] 1519. leav[ing] 2 Grandsons Cha[r]les &

Ferd[inan]d & sev[era]l Grand D[aughte]rs by his Son Philip who died before him. [*page break*]

Charles V. by his Mother Jane Daug[hte]r of Ferd[inan]d of Arragon & Isabella of Castile inherited the whole K[ing]dom of Spain— He was born 24 Feb[ruary] 1500— His Brother Ferd[inan]d 10 Mar[ch] 1503. He yielded to his Brother all the Dom[ini]ons of Austria in Germany—reserv[ing] to himself Spain & Burg[un]dy.

He took Francis the I. Prisoner & kept him in hard Captivity 3 years Afterw[ar]ds he sackd Rome. On 13 Oct[ober] 1529 He held a Diet at Spire & decreed th[at] the Lutherans shoud be [pro]ceedd ag[ains]t. Sev[era]l Princes [pro]tested ag[ains]t this & were from thence calld **Protestants**. This Decree [pro]ducd the famous League of **Smalcald**.

On 8 Ap[ril] 1530 A Decree was passd by the Diet of Augsborg for mai[n]t[ainin]g the Church of Rome by the secular Arm—

This [pro]ducd a bloody War wh[ich] was concluded 2 Aug[ust] 1552 by the **Pacification of Passau**.

AD (PPL-JDFP)

27

Commonplace Book II, [c. 1760]

Mo[nsieu]r Harretin's Treatise of Maritime Geography

In wh[ich] he endeavours to [pro]ve the face of the Earth under Seas to be much the same as those Parts now visible.

==

Linnæus's Treatise entitled "Somnus Plantarum"¹ {Gent[leman's] Magazine July 1757.}²

1. Vegetables require air as well as animals. 2. They have Glands, & by their Leaves perspire. 3. They have their Sponsalia.³ 4. They contract their Flowers at night. Remarkable at Upsal,⁴ that the Momordica Balsamina⁵ being shut up from the air, the Gardiners are obligd to pluck the male flowers off, & sprinkle the Farina⁶ on the Female. Now determind that the [*blank*] Plant in the West Indies is an Animal.

==

Invention of a Judge in Portugal to prevent the Wreck in ordinary Trials.

==

[in left margin:] {1756}

Henry Hall of Plymouth livd several days with 7 oz 5 drams & 8 [blank]⁷ of melted Lead wh[ich] had run down his throat, at the burning the Eddistone Lighthouse.⁸

==

Theophrastus & Aulus Gellius commend the Phrygian Musick for cur[ing] the Sciatica.⁹ So Diseases of the Mind as Sauls Melancholy by David.}¹⁰

==

The Power of Musick. The Cure of the Tarantula.¹¹ The Cure of Fevers in Phil[osophical] Trans[act]ions in 1757. So in Homer[s] 19 book of Odyssey

With bandage firm Ulysses knee they bound.

Then chaunting mystick lays, the closing wound

Of sacred Melody confesd the force;¹² [page break]

The hunting an Elephant in Africa may be the Cause of a Murder in Pensilv[ania] Or the bursting of a Cannon at Quebeck in 1759¹³ may [pro]duce surpriz[ing] Revolutions several Centuries hence.

==

An Admirer of M^r. W—d¹⁴ denied him to be a moral man.

==

Musketoos are first [illegible]{E}ggs then Tadpoles then Flies & stand on the Water

==

L[ord] C[hief] J[ustice] Willes's¹⁵ Judgm[en]t on the Action brou[gh]t by a Man ag[ain]st a Parson for not burying his Wife.

==

Oysters destroyd by Conchs— The Invention of Saws.

==

Did not sometimes Indign[ati]on, and sometimes Pity, check the Sal- lies of Mirth, it woud not be a disagreeable [illegible]{En}tert[ainmen]t My L[or]ds, to observe in the Park, the various Appear[ance]s of these raw Comm[and]ers, when they are expos[ing] their new Scarlet to View, & strutt[ing] with the first Raptures of sudden Elev[ati]on; to see the Mechanick new modelling his Mien, & the Stripl[ing] tott[er]r[ing] ben[ea]th the weight of his Cockade; or to hear the Conv[ersati]on of these new Adventurers, & the instructive Dialogues of Schoolboys & Shopkeepers.

D[uke] of Argyles Speech. 21. V[ide] 38.¹⁶

==

Ministerial Art in Parl[iamen]ts can alone destroy the Essence of our Constit[uti]on, & open Violence alone, the forms of it.

Protest of the Lords ag[ains]t rais[ing] new Regim[en]ts.

Parl[iamen]t[a]ry Deb[ates] 21. V[ide] pa. 104.¹⁷ [*page break*]

Foul Language, My L[or]ds, is always the last resort of a bad cause & a weak head.

L[or]d Harwick's Speech on the Militia Bill in 1754.

{His Majesty compar'd to Samuel.}¹⁸

==

The first Law for quarter[ing] Soldiers in 1692. {Parl[iamentary] Deb[ates]}¹⁹

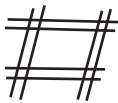
{At 1.st The Civil Magestrate had power to q[uar]ter— Then a Disp[ute] arose Whether Publicans were oblig'd to receive— Ano[the]r Dispute about this word—& at last an Act [pro]pos'd to extend receive to all necessaries.}²⁰

==

I know not by what fatality it is, that to treat & to be cheated, are with regard to Englishmen, words of the same Signif[icati]on.

M^r. Pultney's Speech Parl[iamentary] Deb[ates] 21 Vol. pa. 525.²¹

==



This is the Chinese method of preserv[ing] from drowning, with Bamboos fastend together in this manner, & tied about their Middles—extend[ing] 2[0?]{[8?]} Inches on each Side.

====

The Great men in Charles 1^{sts} time were remarkably little— L[or]d Falkland— Sir George Cavendish— M^r. Chillingworth— M^r. Hales— M^r. Sidney Godolphin—²²

==

Clarendon's Character of Sir Edw[ar]d Herbert— “His Conversation was the most like Reason & yet not it, that he ever knew.”²³

His Description of an uncouth man is “That he never sacrificed to the Muses—²⁴ Graces [pro]per. [*page break*] Augustus²⁵ enslav'd the Roman People by an Authority cloath'd under former Names— “Eadem Magistratum nomina”²⁶ says Tacitus pa. 2. And only united the Consular, Tribunitial & Imperatorial Powers. 6.

== {104.}

Ea sola species adulandi superera[*illegible*]{t.} pa. 7. Messala Valerius.²⁷

==

At Romæ ruere in servitium Consules, Patres, Eques. Quanto quis inlustrior, tanto magis falsi & festin[an]tes, vultuque composito, ne læti excessu Principis, neu tristiores primordio, lachrymas, gaudium, questus, adulatione miscebant.²⁸ 6.

==

Nihil in vulgo modicum: terrere{,} ni paveant: ubi [per]timuer[in]t, impune contemni.²⁹ 17.

==

Incedebat muliebre & miserabile Agmen, [pro]fuga ducis uxor, parvulum sinu filium gerens; lamentantes circum amicorum conjuges, quæ simul trahebantur; nec minus tristes qui manebant.³⁰ 22.

==

Quæ secuta sunt, defleri majis, quam defendi possunt. Vetera novis, & quieta turbidis antehabeo.³¹ 29.

==

Cæcina secundarum am[*illegible*]{bi} guarumque rerum sciens, eoque interritus.³² 32.

==

Vim, sanitatem, copias, cuncta in victoria habuere.³³ 34.

==

Facta arguebantur, dicta impune erant.³⁴ 36.

==

Nam quia vera erant, etiam dicta credebantur.³⁵ 37.

==

Prompti aditus, obvia comitas, ignotæ Parthis virtutes, nova vitia.³⁶ 43.

==

Magis sine domino, quam in libertate.³⁷ 44.

==

Visa, sive ex metu credita.³⁸ 52.

==

Languescet industria, intendetur socordia, si nullus ex se metus, aut spes.³⁹ 58.

==

Spe victoriæ inducti sunt, ut vincirentur.⁴⁰ 64.

==

Non hoc præcipuum amicorum munus est, [pro]sequi defunctum ignavo questu; sed quæ voluerit meminisse, quæ mandaverit exsequi.⁴¹
72. [page break]

Funus sine imaginibus & pompa, per laudes & memoriam virtutum ejus, celebre fuit.⁴² 73.

==

Adeo maxima quæque ambigua sunt, dum alii quoquo modo audita [pro] compertis habent[;?] alii vera in contrarium vertunt. 88. et gliscit utrumque posteritate.⁴³

==

Mihi, quanto plura recentium, seu veterum revolve, tanto magis ludibria rerum mortalium cunctis in negotiis obversantur. Quippe fama, spe, veneratione potius omnes destinabantur imperio, quam quem futurum Principem fortuna in occulto tenebat. ib[idem].⁴⁴

==

The Decimation of one Cohort had such an effect on the Soldiers, that soon after 500 men routed an Army. 89.⁴⁵

==

Germanicus attackd Arminius in his Camp fortified in a Wood—but find[in]g the Engagement unequal, he drew off his Legions, & orderd his tormenta & Slingers to advance: They drove off the Enemy from the Lines, & then the Romans broke in & destroyd them.⁴⁶ 50. {A Knowledge of this Piece of History, might have savd our Troops at Ticonderoga under Abercrombie.}⁴⁷

==

Mæcnas ætate [pro]vecta speciem magis in amicitia Principis quam vim habuit; fato potentiaæ raro sempiternæ: an satias capit, aut illos cum omnia tribuerunt; aut hos, cum jam nihil reliquum est quod cupiant.⁴⁸ 93.

==

Non imbecillum tantum, & imparem laboribus sexum; sed si licentia adsit, sævum, ambitiosum, potestatis avidum.⁴⁹ 95.

==

Multi præsentium odio, & cupidine mutationis suis quoque periculis lætabantur.⁵⁰ 99.

==

Vana à scelestis, dicta à maleficiis differunt. 101.⁵¹ [page break]

Nam si velis quod nondum vetitum est; timeas ne vetere: at si [pro]hibita impune transcenderis; neque metus ultra, neque pudor est. Cur

ergo olim [par]cimoniam pollebat? Quia sibi quisque moderabatur.⁵²
{103.}

==

Obsequium inde in Principem, & æmulandi amor, validior quam pœna
ex legibus, & metus.⁵³ 104.

==

multos etiam bonos pessum dedit, qui spretis quæ tarda cum secu-
ritate, præmatura vel cum exitio [pro]perant.⁵⁴ {108.}

==

Minui jura, quotiens gliscat auctoritas.⁵⁵ 109.

==

Nam beneficia eo usque læta sunt, dum videntur exsolvi posse; ubi
multum antevenere, pro gratia odium redditur.⁵⁶ 123.

==

Nam cunctas nationes & urbes populus; aut primores, aut singuli re-
gunt: delecta ex his & constituta Rei pub[licæ] forma, laudari facilius
quam evenire, vel si evenit, haud diuturna esse potest.⁵⁷ 129.

==

Reperies qui ob similitudinem morum, aliena malefacta sibi objectari
put[e?]nt. Etiam gloria ac virtus infensos habet, ut nimis ex propinquo
diversa arguens.⁵⁸ ib[idem].

==

Spreta exolescunt: si [*illegible*]{i}rascare, agnita videntur.⁵⁹ {130.}

==

Suum cuiq[ue] decus posteritas rependit.⁶⁰ ib[idem]. {Dictis dicta ultus
est.}⁶¹

==

Punitis ingeniis, gliscit auctoritas.⁶² 131.

==

Unum insatiabiliter parandum, [pro]speram sui memoriam. Nam con-
temptu famæ, [*illegible*]{co}ntemni virtutes.⁶³ 132.

==

Rebusque turbatis, malum extremum discordia a[c?]cessit.⁶⁴ {13[7?].}

==

Prosperiore eloquentiæ, quam morum fama fuit.⁶⁵ {13[9?].}

==

Lentulo gloriæ fuerat bene tolerata paupertas, dein magnæ opes inno-
center paratæ, & modeste habitæ.⁶⁶ 135.

==

Qui mos vulgo, fortuita ad culpam trahentes.⁶⁷ 144.

==

Ut sunt molles in calamitate mortalium animi, lac[hry]mas effudit; questus junxit.⁶⁸ 146.

==

Id ipsum paventes, quod timuissent.⁶⁹ ib[idem].

==

Neque mala, vel bona quæ vulgus putet: multos qui conflictari adversis videantur, beatos: ac plerosque, quamquam magnas per opes, miserimos.⁷⁰ 166. [*page break*]

Reputante Tiberio, magisque fama, quam vi, stare res suas.⁷¹ {170.}

==

Barbaris cunctatio servilis; statim exsequi regium vi{detur.⁷² 171.}

==

Nullam ob eximiam artem, sed quod par negotiis, neq[ue] {supra erat.⁷³ 175.}

==

Non eadem omnibus decora: sibi satis ætatis.⁷⁴ 179.

==

Curtius Rufus videtur mihi ex se natus.⁷⁵ 191.

==

Omnia Patres conscripti, quæ nunc vetustissima creduntur, nova fuere. Plebei majistratus post patricios; Latini post plebeios; ceterarum Italiæ gentium post Latinos. Inveterascet hoc quoque: et quod hodie exemplis tuemur, inter exempla erit.⁷⁶ 193.

==

Deligitur artifex talium, vocabulo Locasta, nuper veneficii damnata, & diu inter instrumenta regni habita.⁷⁷ 227.

==

Rogatus sententiam et Scipio: Cum idem, inquit, de admissis Poppeæ sentiam quod omnes, putate me idem dicere quod omnes. Eleganti temperamento inter conjugalem amorem, & senatoriam necessitatem.⁷⁸ {184.}

==

Facili fem[i]narum credulitate ad gaudia.⁷⁹ 261.

==

Et mærens Burrus, ac laudans.⁸⁰ 267.

==

The first method of settling Colonies by the Romans, was by allotting Lands to whole Legions to the Tribunes & Centurions, as well as common Soldiers— But under the Emperors—they [errd] to send Soldiers

of diff[eren]t Corps w[ith]out Officers—whom Tacitus calls “Numerus magis quam {colonia.⁸¹ 272.}

==

Igitur Monam insulam incolis validam, & receptaculum perfugarum aggredi (Paulinus Suetonius) parat, navesque fabricatur plano alveo, adversus breve litus & incertum.⁸² ib[idem].

==

Londinium copia negotiatorum & commeatum maxime celebre.⁸³ 274. [*page break*]

Seneca (qui finis omnium cum dominante sermonum) grates agit.⁸⁴ 283.

==

Decesserat certamen virtutis, & ambitio gloriae, felicitum hominum affectus: sola miser[i?]cordia valebat; & apud minores magis.⁸⁵ 297.

==

Quaedam immo virtutes odio sunt, severitas obstinata, invictus adversum gratiam [*illegible*] animus.⁸⁶ 298.

==

Dehinc, quæ natura magnis timoribus, deterius credebant quod evenerat.⁸⁷ 304.

==

Multa experiendo confieri, quæ segnibus ardua videantur.⁸⁸ 315.

==

Nec minore adulatione servilia fingeant, securi de fut[i]litate credentis.⁸⁹ 323.4.

==

AD (PPL-JDFP)

¹ Carolus Linnaeus (Carl von Linné; 1707–1778) was a Swedish botanist and zoologist who invented the system of binomial nomenclature used in modern taxonomy. His *Somnus Plantarum* (Uppsala, 1755), describes how plants prepare for sleep at night.

² See “*An Abstract of a Latin Treatise, published by LINNÆUS, and entitled Somnus Plantarum*,” *Gentleman’s Magazine*, vol. 27 (July 1757): 315–20.

³ Sponsalia: “Espousals, marriage” (*OED*).

⁴ That is, Uppsala, a Swedish city about 45 mi. north of Stockholm.

⁵ *Momordica balsamina* is an annual vine native to the African tropics.

⁶ That is, pollen.

⁷ The art. specifies “18 grains.”

⁸ The *Gentleman’s Magazine* (July 1757), 321–22, reported this case, which occurred on Dec. 4, 1755.

⁹ Theophrastus (c. 371 – c. 287 BC) was a Greek philosopher and natural scientist who succeeded Aristotle as head of the Lyceum. In his *On Enthusiasm*, he argued that flute

playing cures sciatica and epilepsy. Aulus Gellius (c. 125–post-180) was a Roman author and grammarian who collected and preserved fragments of the work of many authors. In his only surviving work, *Attic Nights*, Gellius titles chap. 13 of book 4, “*The sounds of flutes, made in a particular manner, can cure those afflicted with the sciatica*” (*The Attic Nights of Aulus Gellius*, transl. W. Beloe, 3 vols., [London: J. Johnson, 1795], 1:266). The Phrygian mode of music in ancient Greece, also called the *tonos* or *harmonia*, was formed on a particular scale.

¹⁰ 1 Sam. 16:23: “And it came to pass, when the evil spirit from God was upon Saul, that David took an harp, and played with his hand: so Saul was refreshed, and was well, and the evil spirit departed from him.”

¹¹ See Richard Mead, *A Mechanical Account of Poisons, in Several Essays*, 5th ed. (London: J. Brindley, 1756), 105–06.

¹² Hom. *Od.* 19. JD uses Alexander Pope’s 1725–26 translation, which was published in 5 vols. as *The Odyssey of Homer* (London: B. Lintot); the passage in bk. XIX is at 4:276.

¹³ Here JD is referencing the Sept. 13, 1759, Battle of Quebec, also known as the Battle of the Plains of Abraham, during which exploding and failing cannons impeded, but ultimately did not stop, British efforts, prompting the collapse of New France.

¹⁴ Possibly Rev. George Whitefield (1714–1770), the English evangelical missionary who made several trips to the colonies between the late 1730s and 1760s.

¹⁵ Sir John Willes (1685–1761) was a judge and politician. On Nov. 19, 1756, he was appointed chief commissioner of the great seal.

¹⁶ The quotation is taken from a speech by John Campbell, second duke of Argyll and first duke of Greenwich (1680–1743), on Dec. 9, 1740, about the method of augmenting forces for the coming year. Argyll argued that instead of creating new regiments, men should be added to existing regiments. For the quotation, see *A Collection of the Parliamentary Debates in England*, 21 vols. (London: J. Torbuck, 1739–42), 21:37–38.

¹⁷ In January 1741, a bill was placed before the House of Lords that called for raising seven regiments of foot and four regiments of marines for the year. On Feb. 3, the House rejected a motion to send an address to the king stating that the augmentation was not needed. Thirty-four supporters of the rejected motion then signed a dissent claiming that the augmentation would be expensive, unnecessary, and, as their seventh and last point, a threat to the English constitution. The quoted sentence is the last of that address. See *A Collection of the Parliamentary Debates*, 21:97–104.

¹⁸ For the May 24, 1756, speech of Philip Yorke, first earl of Hardwicke, in opposition to the 1756 militia bill, see *Parl. Hist.*, 15:724–46. Arguing that the bill unjustly took away power from the king, the chancellor claimed that “After a reign of almost thirty years, the king may make Samuel’s appeal, when he demitted his high office of judge of Israel, under the theocracy, ‘Whose ox, or whose ass have I taken, or whom have I oppressed?’” (*ibid.*, 15:730). JD had witnessed that speech. See doc. 1:38.

¹⁹ See “An Act for punishing Officers and Soldiers who shall mutiny or desert Their Majesties Service and for punishing False Musters and for the payment of Quarters,” 4 W. & M., c. 13, secs. 17–19, *The Statutes of the Realm*, 11 vols. (London: G. Eyre and A. Strahan, 1810–28), 6:393–98.

²⁰ Here JD is referencing the debates in the House of Commons of Feb. 24, 26, 27, 1741, on Sir William Yonge’s (c. 1693–1755) proposal to add to the mutiny bill a specific statement regarding innkeepers’ responsibility to supply soldiers quartered on them with victuals and small beer. See *A Collection of the Parliamentary Debates*, 21:114–215. Samuel Sandys, first baron Sandys of Ombersley (1695–1770), asserted in his speech that the year 1692 was “when the first law was made for quartering soldiers in publick-houses” (*ibid.*, 21:121). Yonge eventually altered his proposal in

response to objections, and text was added to the 1741 law to clarify the innkeepers' responsibility (*ibid.*, 21:209–10, 214–15).

²¹ *Ibid.*, 21:521. In 1741, William Pulteney (1684–1764) represented Middlesex in the House of Commons and was a leading opponent of Robert Walpole, first earl of Orford (1676–1745). The quotation is taken from Walpole's April 1741 speech, in which he supported a motion to grant money to the king to support the queen of Hungary, prevent subversion of the House of Austria, and maintain the European balance of power (*ibid.*, 21:508).

²² Charles I (1600–1649) reigned as king of England, Scotland, and Ireland from 1625 until his execution. JD's list of great men of small stature is evidently taken from *The Life of Edward Earl of Clarendon*, 3 vols. (Oxford: Clarendon, 1759), written by Edward Hyde, first earl of Clarendon (1609–1674). Lucius Cary (1610–1643), second viscount Falkland, was a royalist who served in 1642–43 as secretary of state and was killed at the First Battle of Newbury on Sept. 20, 1643. Of Falkland, Clarendon writes: "His Stature was low, and smaller than most Men" (1:38). JD is also referring to Charles Cavendish (c. 1595–1654), a mathematician who served in Parliament and, during the English Civil War, as a lieutenant general of horse in the king's service. Clarendon writes that he was "of so small a Size, that it drew the Eyes of Men upon him" (1:249). William Chillingworth (1602–1644) was a noted theologian who briefly converted to Roman Catholicism. Although he returned to the Church of England, he was a royalist during the Civil War. John Hales (1584–1656) was a man of letters whose circle included Clarendon, Falkland, and Chillingworth. Clarendon writes that Chillingworth "was of a Stature little superior to Mr. *Hales* (and it was an Age, in which there were many great and wonderful Men of that Size)" (1:55). Sidney Godolphin (c. 1610–1643) was a poet and royalist member of Parliament. He was killed at Chagford, Devonshire Co., while serving with the king's forces in the Civil War. According to Clarendon, "There was never so great a Mind and Spirit contained in so little Room; so large an Understanding, and so unrestrained a Fancy, in so very small a Body" (1:46).

²³ Edward Herbert, first baron Herbert of Cherbury and first baron of Castle Island (c. 1582–1648), was a diplomat and philosopher. JD paraphrases *Life of Edward Earl of Clarendon*, 1:248: "by the Knack of his Talk, which was the most like Reason, and not it, He retained still great Credit with the Duke; who being still confounded with his positive Discourse, thought him to be wiser than those who were more easy understood."

²⁴ Here, JD may be referring to John Colepeper, first baron Colepeper (c. 1600–1660), of whom Clarendon wrote: "He might very well be thought a Man of no very good Breeding; having never sacrificed to the Muses, or conversed in any polite Company" (*ibid.*, 1:94).

²⁵ A nephew of Julius Caesar, Augustus was born Gaius Octavius Thurinus (63 BC – 14 AD). He became the first emperor of Rome after the civil war that followed Caesar's assassination.

²⁶ Lat. "the very names of the magistracies." Tac. *Ann.* 1.2. Although it is unclear from which edition JD copied these passages, he owned Thomas Gordon, ed., *The Works of Tacitus*, 3rd ed., 5 vols. (London: T. and T. Longman et al., 1753).

²⁷ Lat. "Only the appearance of flattery conquered [them]." Tacitus applied this statement to Marcus Valerius Messalla Messallinus in *Ann.* 1.8. According to Tacitus, Marcus Valerius Messalla Messallinus (born c. 36 BC) distinguished himself among opportunistic senators, who fell over one another to heap honors on the newly deceased Augustus and his heir Tiberius Caesar (42 BC – 37 AD), by proposing an annually renewed oath in Tiberius's name.

²⁸ Lat. “But in Rome, the Consuls, the Senators, the Equestrians fell headlong into slavery. The more distinguished they were, the more deceived and distressed they were, as they tried to maintain neutral countenances lest they appear joyous at the loss of the Prince or too grievous at the beginning of a new rule; thus, they mixed tears with joy and complaints with flattery.” *Ibid.*, 1.7. One of Tacitus’s primary themes in the *Annales*, as in other works, is the reign of hypocrisy in the imperial system. This instance occurs at the death of Augustus, when first the senators, then the lower classes in succession, rushed to swear allegiance to Tiberius.

²⁹ Lat. “Nothing is moderate in a mob. They terrify if they are not frightened; whenever scared, they are scorned without consequence.” *Ibid.*, 1.29. Drusus Julius Caesar (c. 13 BC – 13 AD), son of the emperor Tiberius, faced a mutiny of the legions in Pannonia. According to Tacitus, there was some discussion among the leadership on how to deal with the mutinous soldiers. Conscious of the above observation concerning crowd psychology, Drusus concluded that a slaughter of the mutiny’s originators was the best remedy.

³⁰ Lat. “A column advanced, female and pitiable, the wife of a commander, a refugee, bearing her little son on her lap, while the wives of friends, who were also dragged along, were weeping all about. No less sad were those who remained.” *Ibid.*, 1.40. In this scene, Germanicus Julius Caesar (15 BC – 19 AD), adopted son of Tiberius, was forced to deal with a mutiny of the legions near the lower Rhine. Over her objection, Germanicus ordered his pregnant wife, Agrippina the Elder (c. 14 BC – 33 AD), to depart for safety. The young child, who grew up in camp, would later become the emperor Caligula (12–41).

³¹ Lat. “What followed can be mourned rather than defended.... I prefer the old to the new, peace to disorder.” *Ibid.*, 1.58. Tacitus put these words in the mouth of Segestes, a leader of a pro-Roman faction of the Cherusci, a German tribe.

³² Lat. “Caecina [...] knew favorable and doubtful circumstances, and so was unafraid.” *Ibid.*, 1.64.

³³ Lat. “They had strength, health, abundance, quite everything in victory.” *Ibid.*, 1.68.

³⁴ Lat. “Deeds were blamed; words were unpunished.” *Ibid.*, 1.72.

³⁵ Lat. “For since [the deeds] were true, so also were their words believed.” *Ibid.*, 1.74. In this passage, Tacitus describes the plight of Granius Marcellus, a governor of Bithynia, who was accused of spreading rumors against the emperor Tiberius. Since the rumors were true, Tacitus explains, people were more ready to believe that Marcellus had spoken them.

³⁶ Lat. “He was readily approached, with easy courtesy, demonstrating virtues unknown and vices new to the Parthians.” *Ibid.*, 2.2. According to Tacitus, the Parthian leader Vonones (died c. 19) grew up as a hostage in the Roman court. Because his honesty and his corruption were based in alien customs, both earned him Parthian contempt.

³⁷ Lat. “Lacking a master, rather than enjoying liberty.” *Ibid.*, 2.4.

³⁸ Lat. “Things seen or believed out of fear.” *Ibid.*, 2.24. Thus Tacitus describes the reports of those who returned from journeys to distant and alien lands such as England.

³⁹ Lat. “Diligence will wilt, laziness will grow, if there is nothing to fear or hope from oneself.” *Ibid.*, 2.38.

⁴⁰ Lat. “They were drawn in by the hope of victory, with the result that they were surrounded.” *Ibid.*, 2.52.

⁴¹ Lat. “It is not the particular duty of friends to follow the dead with useless laments but to remember what he would have wanted and to carry out what he would have ordered.” *Ibid.*, 2.71.

⁴² Lat. “The funeral, though without effigies and a procession, was celebrated by eulogies and the commemoration of his virtues.” *Ibid.*, 2.73. The effigies and procession mentioned here were part of Roman funeral practice, particularly for the nobility. The deceased would be attended by wax masks made in the image of his ancestors.

⁴³ Lat. “The greatest events are indeed uncertain, as some consider true whatever they have heard from any source whatever, while others change facts into the opposite, and both of these [types of falsehoods] spread to future generations.” *Ibid.*, 3.19. Another of the common themes in Tacitus is the uncertainty and ambiguity of history itself. This is often reflected in the language he chooses, but sometimes, as here, he is more forthright about his views.

⁴⁴ Lat. “To me, the more I review events of the present or of the past, the more I observe mockeries of mortal affairs in all affairs. Indeed, because of his reputation, hope, and the respect given to him, all men were more properly marked out for rule than the man whom fortune was holding in secret as the future emperor.” *Ibid.*, 3.18.

⁴⁵ *Ibid.*, 3.21.

⁴⁶ *Ibid.*, 2.20.

⁴⁷ On July 8, 1758, Lt. Gen. James Abercromby (Abercrombie; 1706–1781), then commander-in-chief of British forces in North America, ordered a frontal assault on the French position at Fort Carillon (later Ticonderoga), and was swiftly defeated. On July 12, Abercromby reported that 464 men had been killed, 29 were missing, and 1,117 were wounded. He was recalled in September and replaced by Maj. Gen. Jeffery Amherst (1717–1797), who received his commission on Nov. 9, 1758.

⁴⁸ Lat. “In the latter part of his life, Maecenas held rather the appearance [of friendship] than the actuality of friendship with the emperor. Political power is rarely fated to last forever, or perhaps a feeling of excess seizes some when they have given everything away and others when there is nothing left that they might desire.” *Tac. Ann.* 3.30.

⁴⁹ Lat. “The [female] sex was not merely weak and unequal to labors, but, if allowed the license, [it was] cruel, ostentatious, and greedy for power.” *Ibid.*, 3.33. Tacitus attributes this opinion to Severus Caecina (born c. 43 BC), who thought it improper and positively destructive for magistrates to be accompanied to their provinces by their wives.

⁵⁰ Lat. “Many, with hatred for present circumstances and a desire for change, were delighted even by their own peril.” *Ibid.*, 3.44.

⁵¹ Lat. “Foolishness differs from wickedness, [evil] words from evil deeds.” *Ibid.*, 3.50.

⁵² Lat. “For if you should desire what is not yet forbidden, you would fear lest it be forbidden: but once you cross these boundaries with impunity, there is no longer any fear or shame. Why therefore did frugality once prevail? Because each man governed himself.” *Ibid.*, 3.54. Here, Tacitus relates the contents of a letter from the emperor Tiberius to the Senate, which railed against the luxurious excess of the day.

⁵³ Lat. “Thenceforth there was a deference towards the emperor and a love of emulating him that was more powerful than both punishments under the law and fear.” *Ibid.*, 3.55. According to Tacitus, Vespasian (9–79), who would later become emperor, fought luxurious excess by his own example. His behavior convinced others of Tiberius’s views on the matter.

⁵⁴ Lat. “It destroyed even good men who, having scorned slow but safe [success], hurry after premature [success] even when it is deadly.” *Ibid.*, 3.66. Thus Tacitus describes impatient ambition in those with a promising political career.

⁵⁵ Lat. “Rights diminished as power grew.” *Ibid.*, 3.69.

⁵⁶ Lat. “For favors are welcome as long as they seem possible to repay; whenever they surpass this, hostility is returned for kindness.” *Ibid.*, 4.18.

⁵⁷ Lat. “For all nations and cities are ruled by the people, by prominent men, or by one individual. A form of government, selected from among these and composed of these, is more easily praised than established, or if it happens to exist, it can by no means last long.” *Ibid.*, 4.33. The contrast between the three basic forms of government—democracy, aristocracy, and monarchy—is a fundamental topos in classical political thought. In *Histories*, 6.2, Polybius (c. 200 – c. 118 BC) famously argued that a balanced mixture of these forms would prove more stable than any pure form of government. Polybius was writing in the 2nd cent. BC, when his chief contemporary example was an ascendent Roman Republic with a tripartite form of government composed of the Consuls, the Roman Senate, and the Assemblies. Tacitus, living under the Roman Empire in the early 2nd cent., was more pessimistic about the long-term prospects of mixed-constitution republics.

⁵⁸ Lat. “You will discover people who think that they may be charged with the crimes of others, because they have a similar character. Even glory and virtue have enemies, as they identify their opposites by being too near.” *Tac. Ann.* 4.33.

⁵⁹ Lat. “When despised, they [i.e., criticisms] fade away: but if someone is angered, they seem to be acknowledged.” *Ibid.*, 4.34. The subject here is criticism directed against a ruler. The speaker argues that Julius and Augustus Caesar tended to ignore it, lest an angry response appear to acknowledge the criticism as legitimate.

⁶⁰ Lat. “Posterity repays to each his own honor.” *Ibid.*, 4.35.

⁶¹ Lat. “He avenged words with words.” *Ibid.*, 4.35. In the context of Tacitus, the contrast to avenging words with words is avenging them with punishment.

⁶² Lat. “Authority grows when genius is punished.” *Ibid.*, 4.35. Along with the previous three excerpts, this passage points to the unintended consequences of attacking those who criticize the powerful.

⁶³ Lat. “One thing should be pursued insatiably: a favorable memory of oneself. For to despise reputation is to despise virtues.” *Ibid.*, 4.38.

⁶⁴ Lat. “To these confused events was added the utmost evil: discord.” *Ibid.*, 4.50.

⁶⁵ Lat. “His reputation for eloquence was more favorable than his reputation for character.” *Ibid.*, 4.52.

⁶⁶ Lat. “To his glory, Lentulus endured poverty well then blamelessly gained great wealth which he held temperately.” *Ibid.*, 4.44.

⁶⁷ Lat., “Which is a custom of the common people, who ascribe accidents to moral defect.” *Ibid.*, 4.64.

⁶⁸ Lat. “As the souls of mortals are soft amidst disaster, he shed tears and followed them with laments.” *Ibid.*, 4.68.

⁶⁹ Lat. “[...] trembling at the fact that they had been afraid.” *Ibid.*, 4.70.

⁷⁰ Lat. “Neither evil nor good are what common people think [they are]. Many who seem to be assailed by adversity are blessed; and a good many others, though having great riches, are very miserable.” *Ibid.*, 6.22.

⁷¹ Lat. “[...] as Tiberius thought his circumstances were based more on reputation than on power.” *Ibid.*, 6.30.

⁷² Lat. “To barbarians, hesitation seems slavish, immediate action kingly.” *Ibid.*, 6.32.

⁷³ Lat. “Not on account of extraordinary skill, but because he was equal to the business and not above it.” *Ibid.*, 6.39.

⁷⁴ Lat. “The same things are not seemly for all men: his life was enough for him.” *Ibid.*, 6.48.

⁷⁵ Lat. “Curtius Rufus seems to me begotten of himself.” *Ibid.*, 11.21. Rufus was a politician rumored to be the son of a gladiator. The quote is attributed to Tiberius, who appointed Rufus to a magistracy and had to cover for his origins.

⁷⁶ Lat. “Conscript Fathers, all things which are now believed most ancient were new. The magistracy of plebeians came after the patricians, [that] of the Latins after the

plebeians, [that] of other Italian peoples after the Latins. This likewise will grow ancient and what we establish today by precedents will later be counted among precedents." *Ibid.*, 11.24. JD quotes from the same section in the fifth number of his "Letters from a Farmer in Pennsylvania," *PG*, Feb. 4, 1768.

⁷⁷ Lat. "A master of such arts was selected, Locasta by name, recently convicted of poisoning and counted among the tools of royal power." *Tac. Ann.* 12.66.

⁷⁸ Lat. "Having been asked his opinion, Scipio said, 'Since I believe the same as everyone else about the deeds of Poppaea, you can assume I will say the same as everyone else.' [This was] an amiable compromise between marital love and senatorial obligation." *Ibid.*, 11.4. Poppaea Sabina the Elder (d. 47) was accused of adultery and would be driven to suicide. For the circumstances and intrigue surrounding the affair, see *Ibid.*, 11.1–4. Publius Cornelius Lentulus Scipio (15 BC – 52 AD) was a suffect consul in 24 AD.

⁷⁹ Lat. "With the easy credulity of women, ready for what gives delight." *Ibid.*, 14.4.

⁸⁰ Lat. "And Burrus, who was mourning and also applauding." *Ibid.*, 14.15.

⁸¹ Lat. "A collection [of people] rather than a colony." *Ibid.*, 14.27.

⁸² Lat. "Therefore, (Paulinus Suetonius) prepares to attack Mona, an island mighty with inhabitants and a refuge for deserters, and he builds ships with flat hulls to combat the shallow and ragged shore." *Ibid.*, 14.29. Paulinus Suetonius (born c. 10 AD) was the Roman governor of Britain at the time of this attack (61 AD). JD supplies his name here for clarification.

⁸³ Lat. "London [...] was full of traders and bustling with companies of travelers." *Ibid.*, 14.33.

⁸⁴ Lat. "Seneca thanks him, as one always does after speaking with a ruler." *Ibid.*, 14.56.

⁸⁵ Lat. "The competition for manliness, the ambition for glory, the good-will of fortunate men had passed away: pity alone retained its strength; and this was especially so among the inferior ranks." *Ibid.*, 15.16.

⁸⁶ Lat. "On the contrary, certain virtues are objects of hatred, such as unyielding severity [and] a spirit impervious to goodwill." *Ibid.*, 15.21.

⁸⁷ Lat. "Afterwards, as is natural with great fear, they believed what had happened was worse." *Ibid.*, 15.36.

⁸⁸ Lat. "Many things which seem difficult to the lazy are accomplished by attempting them." *Ibid.*, 15.59.

⁸⁹ Lat. "With no less flattery, they were creating servile fictions, relying on his foolish credulity." Modern and contemporary editions of this passage, from *Ibid.*, 16.2, have *facilitas* (readiness) rather than *futilitas* (folly). The variant appears to have been JD's.

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"Reflections on the Flag of Truce Trade in America. By an English Merchant," [c. 1760]

This is JD's earliest extant essay. It appears to be a later draft that he worked on for some time; portions of it seem to have been copied from an earlier iteration, while other portions are edited, suggesting ongoing composition. The dating is based on JD's numerous references to George II, as well as the notes on the flag-of-truce cases from which it was drawn (docs. 1:58–67). The manuscript pages are bound in a

booklet and many have been removed with a blade, although they clearly had writing on them. JD also included notes at the bottom of many of the pages. By replicating the superscript symbols JD used to compose this essay, the notes and text are rendered as literally as possible within the boundaries of modern typography.

Given JD's notes for the flag-of-truce cases, which contain instances of similar arguments and language, there can be little doubt that this is JD's essay.¹ With Pennsylvania a central hub for flag-trucing, partly thanks to Lieutenant Governor William Denny, JD sought to contribute to ongoing and lively discussions regarding the trade. For instance, as a favorable essay in the *New-York Gazette*, May 19, 1760, noted, "The Trade carried on from these Northern Colonies in Flags of Truce ... has long been the Subject of Conversation, and frequently warm disputes," adding, "This trade must ... be an Advantage to us."² But others disagreed. On August 23, 1760, William Pitt issued a directive from George II to stop the trade. Lieutenant Governor James Hamilton, Denny's successor, responded on November 1, around the time Pitt's letter was published in the colonial press, expressing his disdain both for flag-trucing and for Denny. Hamilton added that he had consulted with Edward Shippen IV, and "the most eminent lawyers of this place" about flag-trucing. Yet to Hamilton's surprise, they indicated they were "in favor of the trade." It is thus possible that JD was among this group that Hamilton consulted, and the meeting perhaps inspired him to compose this essay.³

JD's prior legal work on various flag-of-truce cases also informed this essay, but it is not simply a summary of his previous legal research. It is a political treatise, offering a broad view of the flag-of-truce trade and foreshadowing complaints about Admiralty Courts that colonists offered prior to and during the Revolutionary Era. For those who opposed the trade, at issue was nothing less than treason—giving aid to the king's enemies by supplying them with contraband or funds. But JD takes a different approach, advocating a developmental political economy by arguing that the trade was not only legal but beneficial to Britain and its colonies. Ignoring the extent of illicit trading and corruption in the customs service, JD argues that trade with the French islands resulted in tax revenue for the Crown and increased credit for American merchants to purchase British commodities. Whatever advantage France could gain from such trade would be minimal because British credit and commerce far surpassed that of the French. Also, Britain had a long history of trading with outsiders who had served

the nation well. Arguments to the contrary were jingoistic and resulted in little except short-term political gain.

Although JD clearly intended this essay for publication, it does not appear to have made it into print. Lyman H. Butterfield researched the matter in the mid-twentieth century, writing, “it does not appear in my bibliography of Almon imprints, in the Newberry checklist, the Stevens catalogue of Revolutionary pamphlets, or in my memory as a title I have encountered. This does not mean that it was not printed, but my guess is that it may have appeared in a newspaper serially. Almon collected in various miscellanies a great deal of the stuff that appeared that way.”⁴ With much printed matter now digitized and searchable, it is even more certain this essay was unpublished.

Reflections

on the

Flag of Truce Trade

in

America.

By an English Merchant.

“Other Nations have made the Interests of Commerce yield to those of Politics; the English on the contrary, have always made their political Interests give way to those of Commerce. They know better than other People upon Earth, how to value at the same Time these three great Advantages, Religion, Commerce, and Liberty.”
Montesquieu.⁵

The Contents.

The Nature of this Trade considerd—pa. 1 to 12— It’s Legality considerd—pa. 12 to 40— 1st Proof of its Legality, “That by all Laws divine & human, none ought to be punished as for a Crime, unless there be some positive Law against it”].⁶ but nothing positive in our Laws, against this Trade—pa. 12 to 18— 2.^d Proof from the Conduct of his Majesty’s Ministers in the last War, & the present—pa.18— 3.^d Proof

from an Act of Parliament—pa. 19 to 21— 4.th Proof from the different Conduct of the Parliament in this War, & preceding Wars—pa. 21— The King's Declaration of War considerd—pa. 22 to 32— This Trade not made unlawful by that—1.st Reason—pa. 22 to 26— 2.^d Reason pa. 26 to 27— 3.^d Reason—27 to 29— 4.th Reason—pa. 29 to 32— Any Arguments that may be drawn from the Civil Law against this Trade, answerd—pa. 32 to 36— Any Arguments that may be drawn from the Law of Nations against it, answerd—pa. 36 to 40— The Spirit of the English Commerce, considerd—pa. 40 & 41— Remarkable Instance on this Head—pa. 41 to 45— This Instance applied to the present Case—pa. 45 to the End.

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Reflections
on the
Flag of Truce Trade
in
America.

It is certain that Popular Opinions are often wrong; and yet nothing is more difficult, & sometimes nothing more dangerous than to oppose them.

Even Men, whose Diffidence woud distrust their own Judgments, grow fiercely positive, when they find their Sentiments all around them; and if they are interested in the Subject, they vent their Notions with great Vehemence. The Opinion still strengthens as is spreads, till at last, like a Flood swelled with Rains, it breaks all Banks & bears down every Thing before it.

But this Violence destroys itself. After some Time, Passion subsides; and Men will then listen with Calmness to Truths, that appeard a little before the

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most flagrant Falsehoods.

I hope the Public will hear with this Temper of Moderation, whatever is said with regard to the Flag of Truce Trade carried on with the French Islands, by some of our Colonies on the Continent of America.

Many severe Reflections have been thrown on these People, & a great Clamour raisd against them, for assisting our Enemies to support this unjust War, by trading with them contrary to the Laws of our Country.⁷

I must acknowledge, that this Charge seemd to proceed from such a Respect for the General Good, and was enforced with so much Zeal [*illegible phrase*]; that I was catchd by it, and greatly condemned this [*Intercourse*] {Trade}. However, as it was a Matter of some Curiosity, & Importance to the Rights of Englishmen; I took the Trouble of enquiring what Trade had been carried on by the Colonies, & how they justified their Conduct.

On making these Enquiries, I was quite satisfied, that the Americans have been very much injured by the Representation made [*illegible*] of their Behaviour; and I think it a Piece of Justice due to them, to lay before the Public their Vindication, & the Reasons which

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which convincd Me of my Error.

The American Merchants are accused of injuring Great-Britain by this Trade, & of violating the Laws of their Country. This naturally divides their Defence into two Parts; which they support by the following Arguments.

The Charge of “assisting our Enemies” they answer in this Manner. [*illegible*] It is granted, they say, that We do not supply the Enemy with any warlike or naval Stores, or with Provisions {This is universally acknowledgd to be unlawful.}. We only send to the French Islands, for their Sugars, the Manufactures of Great-Britain & Ireland, some Prize-Goods,⁸ a few East-India Commodities, & the lightest Spanish Pistoles We can get, which pass there for 30 Livres each.⁹ We buy those Sugars for six, seven, eight, nine, or ten shillings, a Hundred Weight.¹⁰ On our Return to the Continent, whatever We land for the Use of the Colonies, pays a Duty of five shillings Sterling per Hundred, to the Crown. [*two illegible lines*] The Remainder of the Cargo, & most frequently whole Cargos are reshipd and sent to Holland. They sell there

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for{#} thirty, forty, or fifty shillings per Hundred. Consequently a Ves- sel, whose Cargo is bought & sold at a Medium between the highest & lowest Prices, will turn every £1000 into £5000. This Money is lodged in England, where it stays; and affords new Credit to the Merchant in America for larger Demand of British Commodities. This is the very

Reverse then, of the Trade carried on with the Enemy by the Dutch; for they covered the French property, & all the profits of the Sales in Europe belonged to France: As was manifest from many Discoveries of Fraud.

The Advantage of this Trade appears from the prodigious^{^θ} Encrease of Importation from England during {See pa. 7.}¹¹

The Author is mistaken here: For the lowest Price for which these Sugars have sold in Holland, has been 36 shillings Sterling—& the highest £3,15 Sterling—So that in the subsequent Calculations, We must be allowed a much larger Profit than is mentiond.¹²

θ The Importations from England alone, to America in 1758 amounted to £1,832948:13:10—Those who compute the Encrease of Importations in 1760 at the lowest allow—it to be one third more than those in 1758—or £610982.[4?]7:11—Others make it much higher—but suppose it only £700,000, which is much nearer the lowest Calculation than the highest, & must be greatly inferior to the encreased Importations from England & Scotland both in 1760—allow then £3[*illegible*]{5}0,[1?]00 of this Encrease to be owing to [*illegible*] the Encrease of Expence among the Americans, [*cont. on p. 7*] from their growing richer, & to the additional Troops We ~~have~~ sent to America ~~the~~ in the Year 1759—tho[ugh] our Army there was as great, or very near it in 1758—there remains the Sum of £350,000 Sterling, which must be accounted for by this Trade.¹³

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[*cont. from p. 8*] be bought with one thousand Pounds sterling worth of Goods. These extraordinary Importations therefore must have been sufficient to load {#} 350 Vessels.

[*illegible*] As it is not possible, that more than this Number were employed in 1759, how utterly unnecessary was it to take any large sums of Money?

What Resources can the shattered Credit of France find from hence?¹⁴ How romantic it is, to think this, appears from her Conduct towards her Islands. She lays little or no Duties, never above two per Cent, on their Sugars when imported, however pressing the Exigencies of Government may be: Restrains with the utmost Care, all extravagant Port-Charges: erects & maintains all Fortifications at her own Expence; & pays Part of their Wages to the Sailors employed in bringing home the Sugars. Thus ~~£~~{f}ar, France rather loses, than gains by her Islands. What then is her Profit from them. “It is, as the ingenious M^r. Postlewaite¹⁵ observes, from the Returns on the Exportation of their Commodities to Holland, Hamburgh, Spain, and other foreign Markets. This, says he, is the

It appears from the Calculations in pa. 4, that if 350 vessels were engaged in this Trade, England woud gain £1,750,000 a Ye[ar]¹⁶

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Source of that Treasure, whereby they maintain such powerful Armies, and afford such plentiful Subsidies and Pensions to several Powers in Europe, when subservient to their Views & Interests.”¹⁷

This Source of Treasure, the American Trade if encouragd, woud turn into the Exchequer of England; & instead of “maintaining the powerful Armies of France” or “[*illegible phrase*] tying the Hands of the Germanic Princes with golden Chains; it might produce other Battles, glorious as that of Minden & other Expeditions, successful of {as} that of St. Maloes.¹⁸

Shoud this Encouragement be given, woud a few Pistoles render any part of the French Dominion impregnable? Will the Want of these, or of English Cloths & Irish Linnens oblige the Inhabitants of any Island to submit to our Arms? Or make the French Monarch less able to oppose & injure Us?

If either of these woud be the Consequence, let this Trade be deemed iniquitous. But if there is no Instance in History of a People compeld to submit by these Means; & if the Gold receivd from Us by the Enemy could not ~~in the~~ {add} one Regiment to their Army or a Ship to their Fleet; let not certain Ruin be brou[gh]t on the Trading People of America, from a credulous Expectation of injuring our Enemies, by Events next to miraculous. See pa. 9.

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[*cont. from p. 4*] during the Time it was general; which for that Year, {1759,} amounted to more than two Millions & an half: Whereas before they never exceeded in one Year, £1,832,948:1[8?]:10—¹⁹

These extraordinary Demands have raisd the Prices of several articles in our Manufacturers very considerably. This must be an Encouragement & Promotion of them: Besides the Employment of many Ships & Seamen in this Trade;{.}[*illegible phrase*]

[*illegible*] These Advantages are [*illegible phrase*] {not visionary.} [*and?*] Molloy in his Treatise of the Dominion of the Sea, speaking of the Trade that was opened with France, in Queen Ann’s Time, says; “It was thought expedient to suffer the Trade between Us & our Enemies, to be carried on in English Bottoms, to the no small Satisfaction of

our Manufacturers, & of great Numbers of Poor employd in preparing the Wool.”²⁰

These Benefits then, are great, immediate, certain, & have been {in part} experienced. On the other Hand, the [*cont. on p. 8*]

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Disadvantages apprehended from this Trade are trifling & remote; or uncertain, & [*illegible*] justified by no similar Event in Times past. We do not furnish the Enemy, with any Things that can be of Use to the State in general; tho[ugh] they may be convenient for the Individuals. The whole Price paid for their Sugars, will scarcely defray the Expences of making them; and as the greatest Part is paid in Manufacturers, they will be worn out in a Year; and new Wants on their Side, will produce new Riches on Ours.

The Money they get from Us, does not turn the Scale in their Favour: For if they gain eight Shillings a Hundred, & We gain forty; certainly We shall have a greater Advantage over them; than when We began this Intercourse.

The Quantity of Cash exported in this Trade may be pretty well ~~calculated~~ computed from the Number of Ships employd in it, & the extraordinary Importation from England. These last for the Year 1759, amount to £700,000; Whereof allow but one half £350,000, on Account of this Trade. The Vessels employd in this Trade, have been chiefly small. On the largest Allowance, one of them with another ~~could~~ {woud} not carry more than 250 Hogsheads; especially as Sugar is too heavy to fill up so high as they can do with most other things. This Cargo, at eight shillings a Hundred, the Medium of price, might [*cont. on p. 5*]

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What greater Advantages could We derive from the most successful War, than that the French should toil for Us at the scanty Pittance of eight shillings a Hundred, for their Sugars? How miserable must be their Subsistence at this Price; which computing the Quantity one person can raise, & the Time he is employd about it, amounts to about two pence half penny a Day? Will Humanity suffer Us to wish, or can Avarice desire, that they should be ground down lower? Can they be more our Slaves?

While they are thus [*illegible phrase*] labouring, & We are gathering all the Sweets; What Part of his Majesty's Dominions {can} be injured

by it? It is hopd the Reasons before given, will satisfy any ~~Per~~ man, that Great-Britain, Ireland, or the Continent of America cannot.

Indeed it cannot be pretended that this Trade will be injurious to any Part, but our West-India Islands; & only so to them, as {it} may relieve [Us?] {Great Britain or the Continental Colonies} from the Necessity of paying any Price they may ask for their Sugars.

It is well known, that the Sugars raisd in the Islands are not sufficient for the Consumption of our own Dominions; & yet the Gentlemen of the Islands are dreadfully alarmed at ~~the~~ {any} Extension of the Sugar Trade.

How far they deserve more particular Favours, than any any other Colonies, belongs to the Justice & Goodness of the

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Common Parent to determine. Perhaps it may be needless to mention, that the ~~Chief of the~~ greater Part of the Inhabitants of the Islands, are African Slaves; [*illegible phrase*] that encreasing the Demand for their Produce, does not add to the number of useful Subjects, but of intestine Enemies: that what they send to Great-Britain, if it may be reckond amongst Conveniences, is yet in the lowest Class of them; & produces no Wealth to her.

On the other Hand, the Inhabitants of the Colonies on the Continent are Englishmen, or their Descendants: Encouraging their Trade adds a real strength to the State: Enables them to supply their Mother-Country with greater Quantities of Naval Stores,²¹ the very Sinews of her Maritime Force; & in a little Time woud make her Independent on any other Part of the World for them: The Flag of Truce Trade particularly, is a Source of Riches.

But it is said, many Gentlemen of the Islands spend their Estates in England, which must be a benefit to her.

If the Meaning of this be, that the ~~Ge~~ Islands indulge themselves in the Gaities of London, & subscribe to Operas and Ridottos;²² they have to be sure the Advantage over the poor Provincials. But if by this is intended, that there Living in England, [*illegible phrase*] makes the Islands of more worth to her, than the Provinces, it must be a great Mistake.

The Provinces import more from England alone, a Million a Year, more than the Islands, This [*illegible*] may be calld

call'd spending Money in England, at least spending it for her, when it is remitted there: And it will not be pretended, that the Money spent by the West-India Gentlemen equals the Difference of [*illegible*] {the} Exports-{:} to the Provinces.

Besides these {#} prodigious Importations by the Continental Colonies, they have involved themselves in immense Debts, thro[ugh] a noble Zeal for the Glory of their King, & the Service of their Country.

Whenever the Royal Requisitions have been made known to them, & they have been call'd upon to assist the Efforts of their Parent-Country, they have constantly exerted their utmost Forces, and tho[ugh] they followed “non passibus aquis,”²³ yet they [*illegible*] sufficiently demonstrated their {Loyalty} & Affection. {⁰}

The Northern Colonies²⁴ imported from England in the Year 1758—£1,832,948:13:10— To this Sum add $\frac{1}{3}$ for the Encrease of Importations in 1759, as before in pa. 4 in the Notes—& it gives £2,443,931:11:9— Reckon the Importations for 1760—most of the Goods being already sent at the same Sum without any Encrease—to these sums add the Importations of the [Provinces] for 1754—1755—1756 & 1757—which amount to £5,581,108:10:5— All these Sums added together make [*illegible*] {£12,301,920:11:4}—the Exports from England alone, to the Colonies on the Continent, from 1754 to 1760 inclusive.

Ø All these things have been done by the Provinces, while the most profitable Branch of their Trade, “the Exportation of Provisions to [*illegible*] neutral Ports,” has been prohibited by Statu[tes].²⁵

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However all the Merit of this Behaviour is obliterated by one Mistake, if it deserves even such a Term, in ~~their~~ trading with our Enemies.

Instantly upon this, our Men of War in the West Indies, leaving the Enemies Ships to slip quietly into their Ports, were wholly employ'd in distressing the American Traders. Without the least Warning, without a single Injunction against this Trade, they were seiz'd & condemn'd.

With what Justice, these Proceedings have been carried on, may appear from the Arguments us'd by the Americans in vindicating themselves from the Charge of “violating the Laws of their country by their Trade.”

In Answer to this, they say, It has ever been thought a peculiar Happiness by Englishmen to have their Property as well as their Lives & Liberties secured by plain & public Laws. Our Judges have been as well convinc'd, that these Blessings could not be otherwise preserv'd,

that they have laid it down as a Maxim, “That the People, whose Law is uncertain, endure the most miserable Slavery.”²⁶

Perswaded of the same important Truth, our Parliaments in all Ages have thought it not unbecoming their Dignity to make Statutes

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Statutes merely to {#} explain the Common Law, or other Statutes.

These Instances of Wisdom and Tenderness in our Parliaments, are convincing Proofs that they have ever thought it their Duty to remove an {ever}y material Doubtfulness in a Law; and that to prevent the Subjects suffering, was an ample

See the next page

My Lord Coke says frequently, that Magna Charta was not a Grant of new Rights to the Subject; but only an Affirmation or Explanation of those, to which they were before entitled.

In the first Year of William & Mary²⁷

Vide the Notes
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our Parliaments are convincing Proofs, that they have ever thought it a Duty upon them, to remove every {material} Doubt {fullness} in a Law; & that to prevent the Subjects suffering, was an ample Reward for their Trouble in removing [*illegible*] {them}. A Sentiment! Which must be acknowledged to be worthy, the Representatives & Guardians of a Free People.

Indeed Statutes [*in?*] may be calld the “[*illegible phrase*] {Political Revelations.}” They contain Truth, Certainty, and Safety. [*illegible phrase*] {Crimes declar’d (see the Margin X) [*in left margin:*] {~~two illegible lines~~} X Crimes declar’d by them are plain, & not left to the Invention of [*illegible*] Judges. [*illegible phrase*] {~~illegible phrase~~} {Saint Paul says,} “Where there is no Law,” that is, no revealed Law, “there is no Transgression;”²⁸ and of {when} the Gentiles which have not the Law, do by Nature the Things contained in the Law, these not having the Law, are a Law unto themselves: which shew the Work of the Law written in their Hearts, their Conscience also bearing Witness,

and their Thoughts” that is, the Light of Nature, “the mean while accusing or else excusing [~~one another.~~”] {them.”} ²⁹

It may be fairly deducd from these

[*illegible phrase*] In the first Year of William and Mary, an {Act} was made, as appears by the Preamble of it, to “explain” the Doubtfullness of some Expressions in the 12th of Car. 2.^d.³⁰ Nay so far has the Care & Goodness of Parliaments extended, that they have framd Statutes barely to explain the Laws relating to poor Persons, & to settle the trifling Disputes between [*illegible*] Parishes, about them. See Carthew’s Reports pa. 396.³¹

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these Words of the Great Apostle; that without a positive Law, or the Conviction of a Man’s own Conscience by the Light of Nature, none ought ~~the~~ {to be} accounted guilty [*three illegible lines*] {of any Crime.}

We find the same equitable Sentiments in Civil Law. “All Laws {says the Code,} which regulate the Actions of Men, ought to be publishd; that every one plainly knowing t[he]ir Injunctions, may decline what is forbidden, & do what is lawful. If any thing in these Laws, shoud be obscure ~~they~~ {it} ought to be explaind by the Imperial Authority, and the Severity, inconsistent with our Humanity, corrected.”³²

Since these great Authorities, and the uniform Conduct of our Parliaments, sufficiently establish the Excellence {& Equity} of this Principle; may We be permitted to ask, if the Flag of Truce Trade did not require some {^c} Explanation³³ before so many Subjects were ~~strip~~ {deprivd} of their Fortunes?

The Commerce of England has been long regarded, as the Source of her Wealth, Safety, & Glory; & therefore promoted with the utmost Zeal. In support of their Commerce, they have boldly & happily departed, from the rules of all the World besides: As if, ~~they thought~~ while they enlargd & encouragd

c This Custom of explaining Laws relating to Commerce, might {then} be proved by numberless Instances in our own & other Countries, with Regard to our own Subjects & others. But they too tedious to mention—Every Writer on Trade is full of them. See some pa. 24. 3d. 50. What Offense can be committed by an English Subject, in Trade, that is not declard so by an Act of Parliament?

A Civil Law Writer says, “That Laws, which make great Changes, the sudden Alteration whereof woud be inconvenient, as the Prohibition of some Commerce, the increase or Diminution of the Value of Money, &

such like, shoud leave Matters for some time, in the same State they were, & appoint the Time, when they shall begin [to be] [observd].”³⁴ It is very [*leaf attached with sealing wax:*] remarkable too, that Magna Charta ch. 30. enacts, “that all foreign Merchants, nisi publice antea prohibiti fuerint,³⁵ shall be safe in coming into England or going out.”³⁶

So careful were our Ancestors in their early Ages, of the Freedom of Commerce; and so necessary {in Equity & Justice} are public Prohibitions, before a Punishment is inflicted, according to the Sense of all Nations.

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this, every other Blessing must follow of Course. {^d} “Other Nations,” says the [Sagacious] Montesquieu, ~~who~~ every one of whose Words has Weight & Wisdom in it, “have made the Interests of Commerce yield to those of Politics; the English, on the contrary, have always made their {[#]} political Interests give Way to those of Commerce. They know better than any other People upon Earth, how to value at the same Time, these three great Advantages, Religion, Commerce, & Liberty.”

Afterwards he says; “It is very remarkable, that the English have made it, one of the Articles of their Liberty, that the Effects of Foreign Merchants, in case of a War, shoud not be seizd & confiscated; except by way of Reprizals.”³⁷

Perhaps if this great man livd now, he woud make this further Observation: “What is still more remarkable, is this, that the English, who guard the property of Strangers, by the most solemn Statutes, yet leave their own Estates, to the fine spun Distinctions of

d Bo. 12. Ch. 6.³⁸

[*leaf attached with sealing wax:*] The English have certainly reversd this Rule, in the Late Seizures of their own Vessels.³⁹

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of Civil Casuistry.” What other Law, if this deserves the Name, have the American Merchants broke thro[ugh], in carrying on this Trade? Have they disobeyed the Law of the Land, the King’s Commands, or {even} the Instructions of his Ministers?

To begin with the last: They have been far from disobeying, that they have thought themselves encouragd to engage in this Trade, by the Behaviour of his Majesty’s Minister’s. They recollected, that in the last War, this Trade with Enemies had actually been protected by the King’s Ships, in pursuance of Orders given to the Admiral.

They knew, that by a Circular Letter from the Commissioners of the Customs to the Officers of his the [*illegible*] Customs in America, taking Notice of this Trade by Flags of Truce; {^f} No other Restraint was laid on it, than that they should not carry Provisions, which certainly was a Permission to carry other Things.

{They knew that French Ships were daily X} [*in left margin:*] {X daily insurd, {&} French Bills negotiated, & {that} their Contract for Tobacco still continued in England.}

They likewise knew, that the Statute of the 6th of his present Majesty, ch. 13th—for laying a Duty of ~5 [per] Hundred on Sugars & of the Growth of any Plantations in America, not under the Dominion of his Majesty, which should be imported into our Plantations,⁴⁰ had been continued

^fThis according to the Common Rule “Qui omne dicit, nihil excludit” &c⁴¹ agreed on by both Civil & Common Lawyers, permits the particulars not mentiond, to be lawful: Unless it be said, the Commissioners had a Right to express themselves in such a Manner as was most likely to lead the King’s Subjects to an Error; that is, to [*torn*] them.

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continued by an Act in the {31st} Year of his present Majesty.⁴²

It was impossible, but the Parliament must have considerd, that continuing that Statute in its full Force, as it was first made, must give the same precise Meaning to all its Terms, that they had, at that Time: Nor can We put any other upon them; For it is too presumptuous to imagine, that his Majesty, and the Parliament should in the space of twenty five Years, use the same words, upon the same occasion, with quite different Meanings.

This would be contrary to Reason, & contrary to Law. “Words & Phrases, says {^g} Bacon, the Meaning of which in a former Act of Parliament have been ascertaind, are, when used in a subsequent Act, to be understood in the same Sense.”

What Construction ought to be made according to this {Rule}, on the last mentiond Statute?

The Words “any Plantations in America, not under the Dominion of his Majesty” in the Statute of 6th of the King, certainly extended to the French, as well as Spanish, Dutch, or Danish Plantations, it being then a Time of Peace, {[.]}⁴³ When these very words then, are reenacted in the 31st {Year} without any particular prohibition of French Productions, are they not included as at first? And when the honest Merchant imports

g 4 Vol. of the Ab. 644.⁴⁴

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imports them, and is willing to pay the Duties, ought he to be ruined for complying with every Thing the Act requires of him?

No doubt, the Legislature thought at the Time of making this Statute, ~~that~~ the Advancement of the Revenue by these Duties, more than an Equivalent for any Injury that woud follow from this Trade; or they woud have been too wise to have made it.

It is well known that the French are our Natural Rivals; and therefore [*illegible*] {our} Parliaments by a thousand Restraints almost, have renderd their Trade as little worth as possible to them {even when We are not at War.}. [*illegible*] {They never} can be said to be at Peace with ~~them~~; {Us;}; no more than a Tyrant, when he is sleeping, can be said to be a Good Prince, because* [*in left margin:*] {*because he does not at that Instant exercise any Acts of Injustice.} For Peace with them is nothing but a preparation & recruiting for War; which seems as necessary for the present Constitution of their Government, as Storms are in the Economy of the World. Unless then it be provd, that giving twenty six Shillings a Hundred for {their} Sugars in Time of Peace, is less serviceable to them, than {~}8 now; and that {the} Revenue of our Crown requires larger Supplies in Time of Peace, than in Time of War; it must be allowd, that this Trade ought to be carried

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carried on now, rather than ever: Or if this were not the Case; that the American Merchants had a Parliamentary Determination, in favour of this Trade, on complying with the Conditions annexd to it.

Another Reason for their believing this Trade lawful, was; that there has been no Statute during the present War, to prohibit Commerce with our Enemies; which has been usual in the preceding Wars; as appears by the Statutes of 1st of Will. & Mary, ch. 34. the 3.^d & 4th of Anne ch 13th —[&] the 13th of Geo. 2.^d ch. 27th—.⁴⁵

In all these Cases, there had been the Common Declaration of War; but that was not thought sufficient Warning to the Trading Part of the Nation, without the Solemnity of a Statute.

Indeed, the Parliament itself, in Queen Ann's Time, was so well convinced of the Impropriety of interdicting all Trade with France; that afterwards in the ninth Year of her Reign, the former Act was repeald, as to several Particulars, & the Trade.opend again.⁴⁶ Can it be

denied after this, that the Parliament thought Trade with an Enemy lawful?

[~~eight illegible lines~~] [torn]

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But it is said, This American Trade is contrary to the King's Declaration of War, which prohibits Trade {all Correspondence of Communication"} with France.⁴⁷

This lays Us under the Necessity of speaking on a Point We would chuse to avoid. If the Prærogative of the Crown ought ever to be unlimited, it ought to be so now: While We are ruled by a Prince, who seems to think Power of no other Use, but to render his Subjects happy; and whose {wise & just} Government has procured for his People, ~~that perfect~~ {all the} Felicity, [~~illegible~~] {as} [~~illegible~~] {that the truest} Patriots could wish their Country. A King who reigns like his Gracious Majesty, in the Hearts of his People, {Subjects,} will never think, because he will never find, the Laws any Restraint ~~to~~ {upon} him. Such a Blessing is not frequent, & has seldom hitherto, been the Lot of England. She [~~illegible line~~] {has therefore thrown Laws X} {Vide Margin} [*in left margin:*]{X around her Liberty, to guard her from any internal Force, as} as Nature has ~~granted~~ secured her from any foreign Violence by Seas. These Laws are calculated as well for War, as Peace. It is the undoubted Prerogative of the Crown to make either: But there is a Difference between declaring War, & annexing Terms to that Declaration. When there is {+} War, the Laws of the Land teach Us our Duties; but if those Terms are not founded on the Laws in force, they are new Laws. Wherefore

+ [*leaf attached with sealing wax:*] War may be without Declaration of it—Grotius Bo. 1 ch. 2^d. & elsewhere: This has frequently happened to England Hale's H.P.C. 163—And as our Laws make no Difference with Respect to the Rights of the Subject, between this kind of War, called "Bellum non solemniter denuntiatum," & the "Bellum solemniter denuntiatum" it is manifest, that the Circumstance of being in War is regarded in Law, as to this Point, & not the Declaration of it. See what the Law of the Land requires of Us, in time of War. *postea* pa. 58.⁴⁸

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Wherefore, {^h} unless the {Common or Statute} Law condemns {the} Ship & Cargo of a Man who trades with an Enemy; the Declaration of War will not: Or if it does, by the same Reason it might condemn a

Man to Death, or his whole Estate to be forfeited: For there is as much {ⁱ} Law to be found for the one, as the other.

This Doctrine would have had more Weight some Ages ago, than {it will have} now. The Royal Prerogative has been polished by the same gradual Means, by which Public Liberty has been established; and the rude Image {of Power}, that used to alarm our Ancestors, with its threatening Look, now charms their Sons with its [engaging?] [*illegible*] {pleasing Countenance.} The History of England shews these Changes in almost every page; & every Englishman must behold with Pleasure the milder Methods of Government, that succeeded the Revolution⁴⁹

h In Coke's 12th Report page 74, It was resolved by the two Chief-Justices, the Chief Baron, & Baron Altham, "That the King by his Proclamation, cannot create an Offense, which was not an Offense before—for then he may alter the Law of the Land by his Proclamation in a high Point— But he cannot subject a Man to Fine & Imprisonment by his Proclamation."⁵⁰

i The Law of England is divided into three Parts—Common Law, Statute Law & Custom. But the King's Proclamation is none of them—For he cannot make that unlawful, which was lawful before—Indeed it aggravates an Offence, that it was committed after the King's Proclamation warning his Subjects against it." 12 Co. ib.⁵¹

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Revolution; and the Prerogative, as it had been called, in many Instances, claiming the Assistance of the Laws.

Not dwelling on more famous Instances of these Alterations; We will confine ourselves to such, as are more immediately applicable to this Subject.

Queen Elizabeth, who with all her Virtues, had [*illegible*] {a} Tincture of her Father's Arbitrariness, only softened by the Sweetness of Temper natural to her Sex, sometimes [*illegible*] {indulged} the Henry in her Disposition.⁵²

During the War, between the King of France, & the Holy League supported by the Spaniards,⁵³ She published a {^k} Proclamation, in Favour of the first; "commanding that no Man should carry Victuals or Provisions for War out of England, into any of the Ports of France, possessed by the Leaguers, upon Pain of High Treason."["]

This {stern Edict was in a foreign War: Yet,} [*illegible phrase*] in the third Year of the late King; A Statute was made "to enable the King by Proclamation, to prohibit all Trade with Sweden, on the intended Invasion of Great-Britain by the King of Sweden":⁵⁴ Thou[ugh]

{¹} such an Intention is [*illegible*] a Commencement of War, by all Laws.

k Cambden's Brit[annia].⁵⁵
l Grotius ~ Hale.⁵⁶

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My Lord Coke, in his second Institute says, "The K[ing] can prohibit Trade with Infidels."⁵⁷ In the Time of {^m} William & Mary this is expressly contradicted.

Afterwards, in the same Institute he says, "It appears from a Determination in the first Year of Eliz[abeth]. that a proclamation prohibiting the Importation of French Wines, upon pain of Forfeiture, was against Law; there not being then any War between the Realms."⁵⁸

This carries an Implication, that if a Royal Proclamation prohibits the Importation of Goods in Time of War, upon Pain of Forfeiture; they will be forfeited, if imported.

The Determination here spoken of, was made in those Times, when too much Respect was paid to the Prerogative, as appears from the Instance just above mentioned. Besides This Proclamation was made by Philip & Mary; but the Determination was in her Successor's Reign; when the whole Plan of Politics was changd; & the former Favour shewn to France, that has just before had been shewn to Spain.⁵⁹

~~Upon the~~ {Upon the whole}, might not the Judges err in this Point, as well as in

m 3 Lev. Rep. 351. On the same superstitious Notion of Infidels being our natural Enemies, & deserving no Trials it was held {1 Ins. 66. 4 Ins. 279.} that they could not be Witnesses: But in the famous Case of Omichund an East Indian against Barker, in the Chancery, [*leaf attached with sealing wax:*] it was unanimously resolv'd by L[or]d Hardwicke, [Lee] Chief Justice of the King's Bench, Willes Chief Justice of the Common Pleas, & Chief Baron Parker,⁶⁰ who were call'd in to the Chancellor's Assistance, that an Infidel might be a Witness; & these Authorities in Coke, denied to be Law. L[or]d Chief Justice Willes said, "such narrow Notions could only prevail, while no other Trade was carried on, but the Trade of Religion."⁶¹

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in their Opinions about Trade with Infidels, & their being {ⁿ} Witnesses, which were Cotemporary Errors in the Law? At least, does it not appear from {^o} what has been practic'd since the Revolution, that

the Notions of Proclamations or Declarations, are not so high as they were formerly?

However, let Us grant the utmost Force to the Declaration of War; and that its Terms are general in prohibiting Trade {all [illegible] {"Correspon}dence or Communication"} with France: Yet it cannot legally induce a Forfeiture of Ship & Cargo {concern'd in that Trade} in the Admiralty.

General as the Terms may be, they could not possibly mean to prohibit all [illegible] every kind of Commerce; {^q} but only such as should be injurious to the Public. Thus by the Law of Nations, if a Belligerent Power should interdict a Neutral Power, to trade with his Enemies. {^p} This Interdiction would only extend to things injurious to the interdicting State, as supplying the Enemy with Material {Materials} of War, or at most provisions. Thus by the Civil Law, "the most sacred Rules regarding things quæ ad divinam Religionem necessaria sunt,"⁶² admit of Exceptions.

n Vide the preceding Note:

o Vide pa. [illegible] 21.⁶³

p Grotius Bo. 3. ch. 1.⁶⁴

q See hereafter pa. [illegible]{29}[.] Such a Construction made on a Statute.⁶⁵

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Exceptions."

~~What confirms this Construction, that there must be exceptions to the Declaration, is the Toleration of several kinds of Commerce [at?] in England- {, as has been observ'd.} It is well known that in the last War[,] & in this, French Ships have been ensurd in England London, & French Bills negotiated there.~~

Their Contract for Tobaccos still continues; & the English Merchant that purchases from the American Planter, can bill to the Enemy with Impunity.

It cannot be imagin'd then, that his Majesty either design'd, or can wish, that his Declaration of a War, undertaken for the Preservation of a Spot for some future Colony {in America,}, should serve as an Engine to crush his faithful Subjects already there, and them only, into Destruction.

What Reason can his Majesty's Courts of Admiralty have for thinking, that the most merciful of all Monarchs, intended any thing so severe? So different from the whole Tenor of his Life? [illegible phrase]

There is not a single Word, in the Declaration of Forfeiture, on disobeying it; and even in the old Case in the second Institute, it is not ~~said~~ pretended, that the Goods imported woud have been forfeited, unless the

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the Prohibition had been, under Pain of Forfeiture, as the Book says. Then even their dreadful Authority, does not authorize the Conduct of the Judges, who have condemnd Flags of Truce: But they have acted as much against the Letter of the Declaration, as against the Spirit of the Law.

The Aversion our Judges have ever shewn to extending Penal Laws need not be insisted on. The Dislike of the Civil Law to Forfeitures & Penalties, is so notorious; that [~~We were?~~] {England was} obligd to introduce [~~illegible~~] {it,} England, {~~illegible~~} to soften the Rigour of the Common Law.

Our Chancery is a Civil Law Court, & prevents Forfeitures or Penalties that woud otherwise incurr.⁶⁶ The Admiralty is a Civil Law Court too; but seems in acting this Part to contradict its own Principles, in directing Forfeitures, without any Law at all.

“Penalties, says ~~the great & good~~ Lord Chief Justice Hale, are not **Juris naturalis, sed Juris positive**;⁶⁷ and on this Principle, the Case of Thomas & Sorrel in Vaughan’s Reports, seems to be founded. It was held in that Case; “That if the Exportation or Importation

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Importation of a Commodity, be generally prohibited, A License may be granted to one or more, without Limitation to export or import: For by such a general Restraint, the End of the Law is conceivd to be no more, than to limit the overnumerous Exporters or Importers, by putting them to the Difficulty of procuring Licenses, & not otherwise.”⁶⁸

This Case naturally leads to the Consideration of the Licenses or Flags of Truce granted for the protection of the American Trade.

The Point before the Court in Vaughan, was, The King’s Power to Dispense with Laws. It was adjudgd, that Mala in se,⁶⁹ as Murder, Perjury, & the like coud not be dispenced with: But that Mala prohibita,⁷⁰ as the Transportation of any Commodities, & several other Acts, prohibited by Statute, might be dispenced with.

Then another Point arose, How far the King coud delegate this dispensing Power to another.

It was determined that the King could not delegate this Power to others; but it was said at the same Time, “that this was to be understood where the King governs in Person, & not where he governs by his Lieutenants, as in Ireland; or by Governors as in the Plantations.”⁷¹

[illegible] Agreeable to this Authority, Governors have always granted these {r} Licenses or Flags; & it is now lookd {on} as a Right annexd to their Government.

r Governors know that the Merchant is not paid for going, & that they must have some profit to induce them {which could only be by Trade;} & therefore it was a License to Trade.

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Of the Propriety of this Measure, they [illegible] {are} the proper Judges. If they abuse their Authority, they are accountable for it: But while they continue in Office {are restrained by no Instructions;}; & exercise the acknowledgd Rights of their Office; can the People over whom they rule, say, they are doing Wrong? Who can say {determine,}, how far that Right ought to be exercis'd, & when it ought to stop? Whether a Governor's Right to grant Flags, is extinguished by his granting five, ten, or fifty? It is not like an Act, that transcends his Authority. The Law declares when that is [done?] {done; [illegible] [injurious in its Nature]} And all such Acts are in X {in left margin:} {X injurious in their Nature:} But it is a Repetition of a lawful Act, [illegible] which is not [illegible] in its Nature; {which is not injurious in [its?] Nature:;}; [illegible] till it becomes so by that Repetition.

In this {last} Case, whether the Acts be done by the King himself, or his Representatives; nothing can relieve but an Act of Parliament: Because [illegible] {they are} contrary to that Prudence, which the Law supposes always to reside in the Supreme Magistrate, & his Deputies; & therefore has not guarded against. {^θ}

To explain this by an Example: ~~The [illegible] Part of the~~ {The King by his} Prerogative to grant{s} Titles of Honour. The House of Peers is ~~one~~ a Part of the Legislative Body. A Weak or wicked Prince might exercise his Authority, in such a manner as to be reproachful to the Nation, & even dangerous, by [illegible] enobling too many persons: Yet no Lawyer in England will say, that the Titles granted by such a Prince are

^θ The Law of Nature & Nations {and the Civil Law both} agrees exactly with the Doctrine here laid down. “Princes may be oblig'd by [leaf attached with sealing wax:] such as they [illegible] depute to declare their Wills,

whether particularly expresst, or collected from the Nature of their Office; for he that grants a Power, grants as much as in him is, all things necessary to that Power, which in moral Things, is morally to be understood: Whence We may collect, that subordinate Commanders may oblige their Sovereigns two several Ways; first, by doing that which in all Probability belongs to their Place or Office; secondly, by doing that which belongs not to their Place or Office; yet which they have a special Commission to do, in case that Commission be either publickly known, or at least unto those with whom they have to do. A Sovereign Prince may be obligd by the Act of his Officer, in case he transgresses not the Bounds of his public office, tho[ugh] he act contrary to his private Instructions[.] This Equity was well observd by the Roman Prætor, in such Actions as concern'd Factories. Every Contract made with a Factor, shall not bind [*illegible*] his Employer; but all such as are made concerning the Goods, for which he was appointed Factor, shall. In case it be publickly proclaimd, That no Man shall thenceforth treat, or make any agreement with such a Man; that Man shall no longer be treated with as a Chief Minister: but tho[ugh] such Proclamation be made, yet if it appear not so to the Contractors, whatsoever shall be by him agreed on, shall bind the Prince, that first employd him." Grotius Bo. 3.^d ch. 22.^d [*cont. on next page*]

No Cases can be more parallel in all Circumstances, than these & the Flag of Truce Trade: Except it be said, that the same Equity & Fair-Dealing are not due to our Subjects, that are due to our Enemies.

It is not very surprizing that Men, who [*illegible*] {pretend the} utmost Respect for the Prerogative, should attempt to give it such a Wound, as to deny; "that a Commission which the Representative of the Crown has a Right to grant, is of [*illegible*] {any} more Validity than a Blank Paper"? This is destroying the Prerogative, to prevent it's being destroyed.⁷²

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bad. {void.}

In a {^s}late Instance, the Constitution was actually violated; but the Peers made at that Time, take precedence of all made since, of the same Rank.

Thus in the present Case; the American Governors have exercisd an {undoubted} Right derivd to them from the Crown, till it is grown grievous, as it is said: ~~that~~{Yet} their Grants ought to continue good, because they had a Right to make them; & that {Right} created a Confidence in the subject to rely upon them.

This Argument {indeed} will have no Weight, if it can be provd, that the Law has guarded more carefully against an {^t} Imaginary trivial Evil, than against {^u}a [*illegible*] {destructive} Mischief, which has been partly [*illegible*] felt: ~~Or~~ if {Or} that, it is more unjust to strip Men{,} of Titles, purchasd by the Prostitution of Conscience; than

industrious Merchants of the Substance acquird by numberless Toils & honest Care.

How happy is the People, that live immediately under the Royal Authority? There that Subject that relies on it, is safe: But at the Distance {of the colonies} from the person of our Sovereign; the Rays of Royalty are so faint, that the Zeal of his faithful People is checked in the Respects they would pay to his Representatives, by knowing they are but Subjects; and when their Loyalty teaches

s When Queen Anne created twelve Peers, in order to carry a Point.⁷³

t The Damage supposd to be done by the Flag of Truce Trade.

u Creation of Peers, to serve the Crown.

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teaches them to confide in their Dignity, they find themselves betrayd into ~~Misery~~ Ruin.

It is hopd, these Arguments are sufficient to prove, that the American Trade is not [*illegible*] criminal either by the Law of the Land, or the King's Declaration.

It may be proper now, to take some Notice of those Arguments which may be drawn from {the Civil Law, for} the Law of ~~Nature & Nations, as from the Civil Law~~ against this Trade.

In answering these Arguments, it is necessary, We should understand precisely, what any Objectors mean by the Civil Law. This Term is {sometimes} usd to signify the {^w}Municipal Law of a Particular People; or {more generally} the Law of the Roman Empire. If it is usd in this Dispute, in the first Sense, the Authorities must be taken from the Common Law or Statutes of England: If in the second, from the Book of the Civil Law, or Writers upon it;{.} [*illegible*] If the Objectors mean the last, they seem to take upon them no easy Task. They must prove, that an Englishman ceases to be an Englishman when he goes to Sea, because he is within the Jurisdiction of the Admiralty; & they must prove by the Laws of a Government which existed several hundred Years ago, that the present Laws of England are of no Force.

What do such Objectors aim

w Grotius Bo. 2.^d ch. 18. Digest 1 Bo. 2.^d til.⁷⁴

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at? Is the whole Civil Law to be imported? ~~and~~ May a Father put his

Son to Death, in London, because a Father could once do it in Rome? Or a Man [*illegible*] put away his Wife, as easily as he can pull off a Shoe; Because Julius Cæsar did it?⁷⁵

These would be Strokes too bold, even for Gentlemen so very fond of the Civil Law: But they say, that Law has been introduced in England; & {X} governs the Admiralty, the Ecclesiastical, & the Military Courts; and Civil Law Books are Authorities in these Courts.

These things must be granted; but every man acquainted with the Laws of England, knows that they have ever looked on this Foreigner with jealous Eyes: That every age has Reigned for some Ages past, has abridged the Admiralty & Ecclesiastical Jurisdictions; & at last the Common Law has reduced them to such Bounds as it approves of. It would be Needless to dwell on these Instances, since the {Law-} Books are full of them. The Limits of these Courts are now settled; & all the Civil Law Authorities in the World cannot enlarge them. 'Tis true, that in Cases, where they have been allowed to take Cognizance, the Civil Law Books may be of use, to guide the Courts in their Judgments; but all of them together, cannot give {a} Cognizance {of actions} to any Civil

x This Authority in L^d. Coke's 3.^d Ins. 58, seems as good as any in the Civil Law— "That formerly, Clergymen, Husbandmen & Merchants were Persons sacred in Time of War." Another, stronger than any in the Civil Law [*agt?*] for Condemnation of Ship & cargo in the Admiralty is Magna Charta ch. 14. which provides that no decreem[en]t shall affect a Merchant's Merchandize—And the Admiralty is not a Court of Record—so that it can only amerce.⁷⁶

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Civil Law Court, that it never had before[.] {And that Distinction answers every thing that can be found in those Books. The Argument may be twisted & turned X} [*in left margin:*] {X turned every way that the Ingenuity of Men can invent: The Jurisdiction of the Admiralty to determine Captures made at sea, may be talked of: But still the plain Question {s} is [*inserted leaf:*] is this {are these} "Whether one Englishman can plunder another of his Ships and Merchandize upon the Ocean; and whether the Admiralty can justify him in it; because some absolute arbitrary Emperor {once} told his Slaves, he would [*illegible*] {treat} them thus, if they should deal with his Enemies?["]

What Englishman, what subject of a True Commercial State, can bear this Enquiry with Patience? It is more than probable, that this dreadful Emperor, who reigns {when dead} over those by his Laws, [*illegible*], that whom he never could bring under their Subjection while

alive, woud if he had ruld a Nation who had a {the last} Genius for Commerce, have adapted his Laws to it. Yet after all, not one express Case can be found, that all Contracts with Enemies are unlawful & void. But allowing there was {such} a Case; allowing that Justinian had once decreed upon a Cause in every individual {particular} Circumstance resembling {that of} our Flags of Truce, are We eternally to be limited to the same Bounds, he prescribed to the Romans?⁷⁷

Even a Prætor⁷⁸ during the Continuance of the Roman Empire, woud not have been so strictly bound up by an Authority, as the Judges of our Admiralty Courts now pretend to be. The {#} Digest speaking de officio Præsidentis,⁷⁹ says, “Licet is qui provinciæ præest, omnium Romæ Magistratum vice & officio fungi debeat, non tamen spectandum est, quid Romæ factum est, quam quid Romæ fieri debeat.”⁸⁰

To the same Purpose {θ} Bodinus, “Res per se valde est pernicioſa, exemplis non legibus judicare, cum ex levissima personarum, vel Cororum, vel temporum, judicia mutantur.”⁸¹

England & Rome differ as much from one another, in {their} Constitutions, Laws & Customs, as two Nations can do; & to suppose that We are to be governd by their Decisions in our ~~Commeree~~ {Naval Affairs}, is as absurd as to say, that We ought not to build Ships in any {other} Manner than they did; nor ever to fight a Battle at Sea, without consulting Chickens; which solemn Rite was requird by their Law.⁸²

What Contempt, Lord Chief Justice Willes had for

Bo. 12.⁸³

θ. de Republica Bo. 6. ch. 6.⁸⁴

[p. 34 cont.]

What contempt Lord Chief Justice Willes had for Civil Law Authorities, appears from what he said in the Case of Omichund and Barker, tho[ugh] he then sat in the Chancery, & the Authority agreed with his own Opinion. “As to the Quotation from Covarruvias,⁸⁵ says he, I will say once for all, that I do not lay any great Stress upon the Citations out of the Civil Law Books, not only because I think the Cause does not want them, but because they are the particular Edicts in other Countries, and only shew the Opinion of the Legislators there, and what the Laws of other Nations are; and it is admitted in our Kingdom there is no Act of Parliament for this.”⁸⁶

These Words imply in the strongest Manner, that ~~without an Act of Parliament,~~ these Citations [*illegible*] kind of authority {cannot} supply the Place of an Act of Parliament.

L[or]d Chief Justice Hale, in his History of the Common Law says^y, “That all the Strength, either the Common or Civil Laws have obtained in this Kingdom, is only because they have been receivd, and admitted either by the Consent of Parliament, and so are part of the Statute Laws of the Kingdom, or else by immemorial Usage & Custom in some particular Cases & Courts, and no otherwise; and therefore so far as such Laws are receivd & allowd of here, so far they obtain, and no farther; and the Authority and Force

y page 27. & 71.

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Force, they have here, is not founded on, or derived from th[emselv]es] for so far, they bind no more with Us, than our Laws bind in Italy. But their Authority is founded merely on their being admitted & receivd by Us, which alone gives them their Authoritative Essence, and qualifies their Obligation.

And hence it is, that even in those Courts, where the Use of those Laws is indulgd, according to that Reception which has been allowd them: If they exceed the Bounds of that Reception, by extending themselves to other Matters than has been allowd them; or if those Courts proceed according to that Law, when it is controlld by the Common Law of the Kingdom: The Common Law does & may prohibit & punish them; and it will not be a sufficient Answer, for them to tell the King’s Courts, that the Emperor Justinian, or Pope Gregory⁸⁷ have decreed otherwise.”⁸⁸

“For these{is} Kingdom[s] has always been very jealous of giving too much Countenance to either of those Laws, & has always shewn a just Indignation and Resentment against any Encroachments of this kind, either by the one Law, or the other.”⁸⁹

Nothing can be added to these Authorities, to prove more fully, with what Strictness the Civil Law Courts are restraind to their settld Limits; ~~and~~ Unless {therefore} such Gentlemen as woud condemn the American Traders in the Admiralty, can prove, that by “immemorial Usage & Custom”⁹⁰ they have condemnd the Property of English Subjects, for the {#} same Cause{;} & {or} that by Virtue of a Sentence in the Novels⁹¹ or Code, they may condemn for any other cause, hereafter to

Vide the page before.

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to be found out, they cannot prove, that the Admiralty has a Right to condemn {English} Flags of Truce.

We will now consider such Authorities, as may be drawn from the Law of ~~Nature &~~ Nations.

The Law of Nations, is the Law by which [as] one Nation does, or ought to regulate it's Conduct with Regard to another; and it cannot but appear very extraordinary, that this should be quoted in a Dispute concerning the [illegible] Municipal Rights of a Subject in a particular State. This way of proceeding is exactly the same, as if a Man instead of looking the right Way thro[ugh] a Spying-Glass, should reverse it, & throw the Objects to a greater Distance; which certainly will answer no other End, but to render them more indistinct. That indeed may be [illegible] {the Design} in the present Case; for if the Gentlemen {can draw off the Attention from the Rights of English Subjects} can make a Chaos of the Law of Nations, Common Law, Statute Law, & Civil Law, they may produce {out of the Confusion,} some Scheme more wild, than the Whim of the Fifth-Monarchy Men,⁹² that may give serve their Purpose.

But to attend the Gentlemen; What does the Law of Nations say about the English Flags of Truce in America? Nothing expressly; but it implies, that trade with Enemies is unlawful. So it is, in the sense used by that Law, which is only this; that one Nation at War with another, is not obligd

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obligd by that Law to permit any Traffic between them. But if one Nation will permit it, it cannot then be {^w} illegal, but by the particular Laws of the other {.} Nation

However, allowing that our foolish {imperfect} Laws have made no provision for [illegible] {our} Regulation in War, tho[ugh] England has been almost constantly engagd in War; at least that they have not sufficiently provided for stripping the Subject of his Property, another Word had {almost} [illegible] come in; how does the Law of Nations aid this gross Neglect in our Kings & Parliaments?

This is done very easily by these Gentlemen. Tho[ugh] all the World perhaps could not introduce that Law by Force, & tho[ugh] every Englishman ought to chuse Death, rather {than} live to see it introduc'd; yet the Judges of the Admiralty by pretending its Authority, may do just {as} [i?]t{hey} please[s], & make it so far [the?] Law, that a Subject loses his whole Fortune by it.

It is not improbable that the Gentlemen encouragd by such Success, when they have tasted its Sweets; & have so happily applied the Law of Nations, to the Case of {English} Subjects, may make another Step, & prove by direct Authorities, “that one Subject may take away the Goods of another {at least within the Adm[iral]ty’s Jurisdiction}, not only by plain Force, but by Fraud also, or by exciting the Treachery of others”: For {aa} Grotius says expressly, that this is allowable by the Law of Nations.

But granting that this Law is to give the Admiralty a Jurisdiction where it never had it before, & that the Judges of those Courts are to be regulated by it; yet nothing can be found in it, to condemn what has been done by the Flags of

w Grotius Bo. 2.^d ch. 18.⁹³ & [*illegible*]

aa Grotius Bo. 3.^d ch. 5.⁹⁴

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of Truce.

Every Merchant concernd in that Trade, will freely allow, that his Vessel & Cargo ought to be condemnd, if She carried to the Enemy, Provisions, Arms, or any Materials for War: And this is all that the {bb} Law of Nations disapproves. If We are to be judgd by it; let Us also be acquitted by it.

Since We have mentiond these Particulars, it may be proper here to observe, how exactly our Law agrees with the Law of Nations on this Head.

It woud be very surprizing, if so perfect a Government, as that of England, had not made Laws for War as well as Peace. But that is not the Case.

As a Subject cannot commit a greater Offence, than by assisting the Enemies of his Country; by the Statute of the 25th of Edward the 3.^d it is made High Treason “to adhere to the King’s Enemies, within the Realm or without,” “or give them Aid, or Comfort.”⁹⁵

No Words can be more general than these, & therefore they tend to all Criminal Intercourse with the Kings Enemies: Yet the Construction made on these Words is {[only?]}; that ~~they~~ they only are guilty of adhering &c Who join with the King’s Enemies, surrender a Castle to them for Reward, & at most, those who furnish them with arms, [or] {or} other Materials of War (or carry Provisions to a Place besiegd).

Agreeable to this Construction, We find that Queen Elizabeth, who sometimes {almost} confind herself {*illegible*} to Laws, publishd a Proclamation, commanding “that no Man shoud carry

bb Grotius Bo. 3.^d ch. 1.st 96

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carry Corn, Munitions or Provisions for Shipping out of England, into Spain, {^{cc}} because he professed himself an Enemy to England, on Pain of High Treason.”⁹⁷

In short, What more does his Majesty prohibit, by his Declaration of War, but these Things? After the general Clause forbidding all “Correspondence or Communication” with the French King or his Subjects; his Majesty forbids carrying to them, “any Soldiers, Arms, Powder, Ammunition, or other Contraband Goods.”⁹⁸ It is only necessary to observe on this, that either the word “Contraband” must have no Meaning; or else, it is lawful to carry other Goods.

Thus We find, that the Law of Nations, the Law of the Land, & the Practize of one of our greatest Princes, all ~~agreeing~~ center in one Point, & declare as it were with one Voice, that the American Trade, as it has been carried on, is {^{dd}} legal.

cc Cambden says, at that Time We were in an actual State of War with Spain.

dd It may be proper to take Notice, that if this is any Offence, it must be High Treason, coming within the general Words aiding &c: or a Misdemeanour punishable in the King’s Courts— For if it contrary to the very Spirit of the English Law—that the Admiralty shoud cause a Forfeiture of £50000—which cant impose the least Fine.

If they may punish—a Man may suffer twice for the same Offense— He may be fleecd in the Admiralty, & afterwards indicted.

Besides, the Admiralty cannot have Juris Cognizance of any Offence committed in this Flag of Truce Trade, from the Nature of it: For if the Offence consists in the Importations, the Instant the Vessel comes into Port, She is within the Body of the Country, as every Port is, in Law; & then the Cognizance belongs to the [*cont. on next page*] to the Common Law. If the Offence consists in corresponding or traffiqueing with the Enemy; that was committed beyond Seas & the Admiralty’s Jurisdiction by several Statutes is limited to Acts done on the Seas.

It will not give them a greater Right to say, that the Capture was at Sea; for that was founded upon some supposd Offence—& wherever that was committed, every thing following must be referrd to it.

For these Points See numberless Authorities in the Law Books.

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Perhaps one or two Reflections on the Commerce of England in general, may tend to confirm what has been said.

The Liberty & Commerce of England have improv'd together. They support one another. Both have extended beyond the Limits, which former Ages thought {it} impious to exceed{.} [*illegible phrase*]{So on the other hand, many} [*leaf attached with sealing wax:*]{X So on the other Hand, many Institutions thought excellent by them woud be destructive now. [*illegible*]{These Institutions} of our Fathers are buried with them; & we shoud be as much frightend, to see their Laws revivd; as themselves.

If such is the Case with many of the Laws of our own Country; What can be more justly alarming to Englishmen, than to see the Admiralty assuming to itself unbounded Power, over one of its most precious Possessions, its Commerce{:} And this Authority founded, on [*illegible*]{one Line of some} antiquated Page of, that has slept in undisturbed Silence, with its Composer, for a thousand Years.

All Things are subject to Change. The freedom & Commerce of Great-Britain have receiv'd many happy Changes. [*two illegible lines*] Many Alterations are caus'd by Time, that our Ancestors} are caus'd by Time, that our Ancestors could never think of, & therefore could make no Laws relating to them. Nothing then, can properly regulate the Actions of a Free People, in Cases which have any thing of Novelty mixt with them {as their Trade constantly will have}, but the Supreme Power in their Constitution—[*illegible phrase*] of “Thus, says Montesquieu, {England} changes her Laws of Trade, in some Measure, with every Parliament. Supremely jealous with Regard to it, they bind themselves, but little by Treaties, & depend only on their own Laws.”⁹⁹

{He then proceeds (See the Margin θ)} [*on same attached leaf:*]{ θ He then proceeds to shew the Wisdom of England in quitting the common Path in the regulation of her Commerce. “Other Nations, says he, have made the Interests of Commerce yield to those of Politics; the English on the other Hand, have always made their political Interests give Way to those of Commerce.”¹⁰⁰

If this strict Observer of Mankind had ~~lived to~~ see{n} these Days, he woud no doubt [*illegible*]{have left} that Sentence of his Book; or at least {have} take{n} Notice, that the System of England was greatly alterd; [*illegible*]{that like the Nations around her, She now bowd down to the Great Idol of Politics; defild the Purity of her Freedom, with the sacrifice of her own People.}

England has wisely endeavoured to restrain Commerce, as much as possible to her own Subjects. When She has attempted to restrain the Commerce of her own Subjects,

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Subjects, She has not been so happy: But has been taught by experience, how much *[illegible phrase]* {the greatest Wisdom may err in stopping} any Branch of Trade, {,} *[illegible]* to regulate it to prevent its *[illegible]* {supposed} Consequences, {,} *[illegible phrase]*

Her Conduct in the last War,¹⁰¹ seemd to confirm the Rule of the celebrated Author just mentiond; “That a free Nation labours more to acquire, than to preserve its Commerce: A Nation in Slavery, more to preserve, than to acquire.”¹⁰²

When the Parliament at that Time, took into their Consideration, our Insurance of the Enemies Ships; “they touchd with a tender, with a trembling Hand” (as my Lord Chesterfield¹⁰³ elegantly expresses it with Regard to another Kind of Liberty) the Freedom of Trade {,} ¹⁰⁴
[two illegible lines]

{This Freedom may be compar'd to a sound, but delicate Tree in some happy Climate, that is perpetually putting forth fresh Flowers, & new Fruits. It's Vigour may indeed over load it; But no little Skill is X *[in left margin:]* {X requir'd in relieving it from its Burden. The Pruning Hook is not to be trusted to every hand: Least the Force design'd to guide it's Growth, shoud destroy some noble Branch. None but those that rais'd it, & know the Tenderness of its Nature, ought to meddle with it. They no doubt, will treat it with the Care it requires.}

In the Debates on this Occasion, the Disadvantages of *[illegible]* {ensuring the Enemy,} were *[illegible]* strongly insisted on. It open'd an unlimited Correspondence between the two Kingdoms; so that it would in all Probability supply the Enemy with Intelligence, & might prove destructive to the best concerted Plans of Operation.

Another weighty Objection to it was, that every

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every Victory gain'd our Enemies, was in fact a Victory over Ourselves; and the whole War was carried on between the Royal Exchange¹⁰⁵ on one Side, and the Royal Fleet on the other. The Enemy by insuring a Vessel & Cargo worth £10000, at 20 [per] Cent, & then re-insuring the Premium at the same Rate could not possibly lose more than £400, if She was taken. The rest only shifted from the Pockets of the Underwriters, into those of the Captors. Every Battle therefore that gain'd

the Nation £400, in all probability cost her the Lives of ten brave Subjects; by which Number dividing 400, settles the Price of An Englishman exactly at forty Pounds, not one half the Value of a good Negro,¹⁰⁶ not the twentieth of some Race-Horses.

This Sum of £400, was the utmost Profit, the Nation could make, under the Circumstances mentiond: But even this was precarious; & {perhaps} did not happen in the Case of one Prize, out of fifty.

Any Man may conceive, that if the Enemy ensured £400, more than the real Value of the Vessel

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Vessel & Cargo; the Captors took £400 less than the Underwriters were to pay for; deducting the Premium for the £400. This bro{u}ght the National Account just to a Ballance, on the Capture of the ~~Vessel~~ Ship; unless We consider the Men lost, & then it turnd a little against Us.

If We can form then such an unchar{i}table Opinion of French Honesty, as to suppose, their Policies were valued higher than the Real Worth of their Property; We may safely affirm {however paradoxical it may appear}, that England took no Prizes in the last War, whatever Englishmen might do: Nay, that the {ir} Success ~~after~~ brought her in Debt. {^{ee}}

The only Pretense of Reason, in favour of these Insurances, was; that they must have been advantageous to the Underwriters, or they woud not have engagd in them; & if advantageous to them, {^{ee}} it must have been so to the State. But this Advantage could arise from no other Cause, than the Security of the Enemies Trade; & the bad Fortune of our Men of War & Privateers. {Tis true the ensuring French Ships, does not prevent*} [*in left margin:*] {*prevent their meeting with ours, or their being taken: But when this happens, it prevents the Nations acquiring [*illegible*] that clear Gain, which otherwise it woud.} Upon this Principle, it is the greatest Madness imaginable, in the Government, to suffer its Ships to engage the

ee [*illegible*] the Opinion of It is not pretended here, to give all the Arguments made use of, against this Practize. The Author had not any Books by him, that treated of the Subject; but recollected some of the material Points insisted on; & has added such Reasons in support of them as occurred to him; which he believes [*illegible*] {though} more weakly exprest, may agree with the Debates on this Subject.

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engage the Enemy. All the Benefit the Public can gain, is to tax itself with immense Charges in equipping Ships of War, to serve as hawks in driving Partridges into the Nets¹⁰⁷ of the Underwriters. This raises Premiums; this [forces] {swells their} thousands{.} [illegible]

But if our ~~Ministers~~ Sea Officers are not content with these Advantages, they may knock themselves in the head, & ruin their Ships; but their Country will never gain one Farthing by their Gallantry. So far from it, that is puts her to a new Expence in repairing her Losses: & unless the Advantage of insuring is more than equal to all the Toil She undergoes, & all the Blood & Money She spends; her Naval Force is renderd utterly useless. {, by^X} [*in left margin:*]{X by this Practice of ensuring the Enemy.}

[*illegible line*] {To these Objections, may be added, the Encouragement} hereby given to the Trade of our Enemies; by giving them the best {mercantile} Security in the World for it.

Such was the apparent pernicious ~~Practize~~ {Nature} of this ~~Nature~~ ~~Practize~~; and it seems hardly possible to imagine any could be more so: or could call more loudly for Redress. It occasiond so much Uneasiness in the Nation, that at last the Parliament took it into their Consideration; & the Subject was thoroughly discussed in the House of Commons.

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the Surprize of many prejudicd People without Doors this method of ensuring was defended, by Members the most remarkable for unshaken Patriotism, fine Understanding, & Knowledge of Trade.

Their Arguments prevaield over popular Clamour; & the ~~Practize~~ was not in the least restraind. So tender was the House of Commons of giving a Check to Commerce; & so clear was their Opinion, that all Intercourse with an Enemy was lawful; “where there was the slightest Probability, that it might be advantageous to the State.”

X [*in left margin:*] {X Q[uære]} If there was not a Statute afterwards made to [pro]hibit these Insurances?} The Event of this Affair has establishd the Custom of ensuring the Enemies Property; & it has been accordingly done all this War.

It cannot then, but be Matter of just Surprize, to any one, who will reflect; that while this Custom has been approv'd by Parliament, & tolerated by all Ministries; the American Trade should be prosecuted with such unrelenting Rigour.

Whoever compares these two together, must be satisfied, that the last cannot be so injurious to Great Britain as the first.

Even grant that all the Sugars bought in the French Islands, were purchas'd with Pistoles; yet the Sum woud not be near equal to that paid for [*illegible*] Insurances of Captures taken from the French{.} [*illegible phrase*] We will go still farther: Allow the Premiums receivd

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receivd from France in one Year, amount to £1,200000 Sterling; & that the Underwriters never meet with one Loss; {other of} which We suppose the most sanguine Favourer of theirs will not attempt to prove: allow likewise that the Americans in that Year pay the French £400,000 Sterling, for Sugars, which they sell on Exportation to Foreign Marketts, for only 400 [per] Cent, one of the lowest Prices they have got.

Every thing being thus exaggerated on the one Side, & diminish'd on the other; still it appears, that this Trade is as beneficial to the Public as the Insurances. If We consider, that the French in this last Case, are carrying on their own Commerce, with the Property We insure, & in the safest manner, this is infinitely more hurtful than the American Trade; which is carried on by our Subjects; and actually supports, and is supported for the greatest Part, by British manufacturers.

The Objection of giving Intelligence, prest with so much Warmth in the House of Commons, against these Insurances, woud only make one smile, if mention'd with Respect to this Trade; unless We can suppose, they may be so slow in England in preparing for some Enterprize: that before

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before it could be executed, the Intelligence might travel from thence to our Continent; from hence to the French Islands; & from them to France; which might happen, if there was a good sailing Vessel ready equipt in every Port, & favourable Winds in every Voyage, within the short Space of three Months. But as the Channel of Conveyance is still open with the Enemy by the Continuance of their Insurances; it is more than probable, that when the West Indian Messenger should arrive, ~~the~~ {at Versailles, the} dreadful News had arrived at Versailles made the French Monarch¹⁰⁸ tremble eight Weeks before.

This Intercourse differs too, from that of Insurances in another Respect. The last is unlimited: the other is restrain'd; & may be more so, if the Crown, or its Representatives chuse it. Their Direction can

always determine to what Places, & at what Times, Flags ought to be sent.

It may be further insisted on, in favour of this Trade; that while the Practise of ensuring the Enemies Property continues, it must be more advantageous to the Nation, than Privateering, which will be allowed to be lawful.

A Vessel may be loaded with Sugars in the French Islands, as has^{ff} been said, for

ff pa. 7.¹⁰⁹

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for £1000 Sterling. This Cargo in foreign Marketts will produce £5000 Sterling {at the very least.}— So that £4000, are clear Gain to Great Britain. On the other Hand, suppose that very ~~Vessel~~ Cargo to be taken in a French Ship, by an English Privateer, without striking a Blow; so that She loses no Men, nor receives any Damage. The Captors in such Case gain £5000; and so does the Public. But if {our} crafty Competitors have been artful enough, to have themselves insured in England; Things are changd. Say the Insurance {Premium} was ~~any~~ ~~[illegible phrase]~~ 40 [per] Cent: ~~[illegible]~~ a{A}nd that {they} insured the Value ~~[illegible]~~{of} their Sugars {woud bear} in Europe, that is, £5000.

Then, according to the {^{gg}}Principles before establishd, the Nation receives £7,800, by the Capture & Premiums. Out of that, they are to pay the Enemy £4,200; which leaves £3,600 for the Public Gain; that is, just £400 less, than woud be gaind in the Way of this Trade: Even, without allowing the £1000 receivd for the Commodities We vendd, to be any Profit at all.

Another Distinction between American Trade & this Kind of Insurance is; that this does not employ a single Ship, nor a single Sailor: But that is a Nursery of Seamen, and Artificers. This is a Truth, which Words woud only weaken. The Heart of

gg page ~~[illegible]~~ 42.

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of every Englishman will dictate more to him, on this Subject, than the Lips of a Tully¹¹⁰ could utter.

This Comparison may be concluded, with observing; that the Method of ensuring is a selfish Business: But the American Trade, either {^{hh}}increases the Revenue of the best of Sovereigns; or what is infinitely more agreeable to his Gracious Disposition, {ⁱⁱ}gives Bread & Comfort, to the poorest of his People.

It may be urgd perhaps, that the Intercourse for Insurances, is carried on by Letters; & sometimes by means of a third person, the Subject of a Neutral State: But the Americans traffic immediately with the Enemy; & therefore it is more unlawful.

This is a mere Difference about Names. All that concerns the State is; Whether there is such an Intercourse; & Whether that Intercourse is injurious.

By our Laws a Man may commit High Treason, by a Correspondence with Enemies {by Letters.} By his Majesty's Declaration of War, he forbids "all Correspondence or Communication" with the French King or his Subjects."

The Writers on the Law of {Nature &} Nations agree, that "Ensuring the Property of Enemies" is {directly} contrary to the Rights of War.¹¹¹

Granting therefore, for the Sake of Argument, that

hh By the Duties on the Sugars: Which are very high.¹¹²

ii "When the Poor and needy seek Water, & there is none, & their Tongue faileth for Thirst, I the Lord will hear them, I the God of Israel will not forsake them." Isaiah 41.17.

"Whoso stoppeth his Ears at the Cry of the {Poor,}, he also shall cry himself, but shall not be heard. Prov. 21.13. "But he that hath a bountiful Eye, shall be blessd: for he giveth of his Bread to the Poor." Prov. 22.9.

See what Molloy says of opening Trade with France in Queen Ann's Time. pa. [*illegible*] 7 antea.¹¹³

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that the American Trade is equally unlawful with these Insurances; Why shoud such unequal Judgments follow? Does the Severity of the [~~the Law?~~] {Judges} encrease, with the Intenseness of Heat, {?} & a Correspondence with Enemies become a fatal [*illegible*] {Crime,}, in the Latitude of Forty; that [*illegible phrase*] {is just & allowable in fifty two?} [*illegible phrase*]

If these Circumstances do not alter the Case, it is difficult to say what does.

How different from the Conduct of the English Ministry,¹¹⁴ has that of the Dutch been? What Wisdom, what Tenderness have the

States always observd with Regard to the Commerce of their own Subjects?

Tho[ugh] their greatest Lawyers have ~~it~~ {held it} unlawful to ensure the Goods of Enemies; yet the States have constantly thought it [*illegible*] {proper,}, to warn their Subjects against it, when judgd necessary; as appears from their Edicts dates the 13th of May 1622, & the 31st of December 1657,¹¹⁵ & several other Instances{.} of [~~this S?~~]

Had the like Notice been given to the

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to the Merchants of America, many of our naval Officers woud not now riot on the Spoils of their Fellow-Subjects; while the late owners reducd from [*illegible*] State of Affluence feel the Distresses of Poverty.

Certainly there are so many Reasons for believing this Trade to be lawful, that it cannot but be thought almost singular Hardship for so many English Subjects to be ruind, when one Letter to a Governor, a short Proclamation, or ten Lines in an Act of Parliament, might have explaind the Matter, & have savd them from Destruction.

If the Child of a tender Mother shoud [~~aim~~] commit a Fault, which for the future She might prevent by her Commands, woud she chuse rather to disable him by a dreadful Beating, or by cutting off one of his Hands?

What seems to aggravate these Misfortunes is; that a Gentleman in one of the highest Posts of the Law in England, in his Opinion on this Trade, has acknowledgd it's [~~Illegality to~~] Illegality to have been doubtful, by saying "It is now settled, that this Trade is unlawful."¹¹⁶

52

But when was it settled? There never was a {Judicial} Determination or a single Opinion in America, that it was unlawful, tho[ugh] many on the other Side, nor was this Settlement made in England, till the Fortunes of most of the American Merchants were engagd in it.

Thus they alone have undergone, in this happy Period of Public Liberty, the uncommon Fate of being punishd, not by a Law made, but what is infinitely more to be abhorrd, by a Construction of some unknown Mystery calld Law, **ex post Facto**.¹¹⁷

AD (PPL-JDFP)

¹ See particularly notes for the case of *Spring & Kemp v. Ospray & Elizabeth* [c. 1758], docs. 1:62 and 1:63.

² Thomas M. Truxes, *Defying Empire: Trading with the Enemy in Colonial New York* (New Haven: Yale University Press, 2008), 92–93. The *New-York Gazette* essay was reprinted in London in August 1760; see *London Magazine: or, Gentleman's Monthly Intelligencer* 29 (1760): 405–08. See also *A State of the Trade Carried on with the French* (London: W. Owen, 1760).

³ Francis Thackeray, *A History of the Right Honorable William Pitt*, 2 vols. (London: C. and J. Rivington, 1827), 2:475, 496–97. See also docs. 1:59, 61, 62; *PBF*, 6:490; 9:193–94, 310–12. For Pitt's letter, see, for instance, the *New-London Summary*, Nov. 14, 1760; *New-York Mercury*, December 1.

⁴ Lyman H. Butterfield to J.H. Powell, [n.d.], PPAmp-JHPP.

⁵ Montesquieu, 2:17 (bk. XX, c. 6).

⁶ Source not identified.

⁷ *Read's Weekly*, Sept. 6, 1760, for instance, printed an extract of a June 15 letter from Jamaica: "This is a trade that the subjects of these parts and North America, carry on very freely, conveying dollars and the comforts and necessaries of life to the enemy, in exchange for their productions. It is affirmed here, that had it not been for this illicit and pernicious traffic, the last French fleet could not have sailed to Europe, as the enemy is thereby furnished by us with those sinews of war, money and provisions."

⁸ Prize goods: any goods "seized or captured by force, esp. in war; booty or plunder" (*OED*).

⁹ Pistole: "A Spanish gold double-escudo dating from the 1530s and surviving into the 19th cent.; (also) any of various coins derived from or resembling this from the 17th and 18th centuries, esp. the louis d'or issued in 1640 (during the reign of Louis XIII), an Irish coin issued in 1642–43 (in the reign of Charles [II]), and the Scottish twelve pound piece issued in 1701 (during the reign of William III)." Livre: "Any of a number of coins or units of account in use in France between the 8th and 18th centuries" (both *OED*). See also doc. 1:62, n. 3.

¹⁰ Hundredweight: "An avoirdupois weight equal to 112 pounds; probably originally to a hundred pounds, whence the name" (*OED*).

¹¹ The text proceeds from p. 4 to 7 to 8 to 5, then resumes correct order with p. 9.

¹² JD is clearly referring to a specific work, but the source has not been identified.

¹³ The value of exports to the mainland colonies from England and Wales fluctuated in the early 1750s but climbed steadily from £1.2 million in 1756 to £2.5 million in 1760. Exports to the colonies declined to £1.5 million—out of £10.8 million in total exports—in 1761. For more, see John J. McCusker, "The Current Value of English Exports, 1697 to 1800," *WMQ* 28, no. 4 (1971): 624; Alvin Rabushka, *Taxation in Colonial America* (Princeton, N.J.: Princeton University Press, 2008), 724.

¹⁴ The French economy fared poorly at the end of the War of the Austrian Succession in 1748, with "French commerce ... at the mercy of the British navy and privateers." Things had not improved by mid-1750s: "The [French] government's ability to raise loans was only as good as its credit, and this was dependent on the state of the French economy as well as on the reputation of the government abroad. It did not bode well that French exports in 1755 declined by 10 percent compared with the preceding year and imports by 2 percent." By the late 1750s, "the French monarchy's ability to sustain its credit was coming into doubt. The 132.2 million livres that it raised in general loans in 1758 were almost 4 million less than the amount borrowed during 1757." See Dull, 10, 46, 114.

¹⁵ Malachy Postlethwayt (1707–1767) was a British mercantilist economist best known for his compendium entitled *The Universal Dictionary of Trade and Commerce*, 2 vols. (London: H. Woodfall et al., 1751–55).

¹⁶ Source not identified.

¹⁷ Here JD is referring to two sections of Malachy Postlethwayt, *The Importance of the African Expedition Considered* (London: C. Say, 1758), the first of which is: "In the article of sugar alone, the French have, within the same time, increased from the quantity of about *30,000 English hogsheads *per Annum*, to 120,000 or thereabouts; whereof about two thirds are shipped to *Holland, Hamburg, Spain*, and other foreign markets" (38–39). The second reads: "It is from hence they chiefly maintain such powerful armies, and afford such plentiful subsidies and pensions to several Powers in *Europe*, when subservient to their views and interests: and it is from hence that they build their ships of war, and nourish and maintain seamen to supply them" (40–41).

¹⁸ The Battle of Minden, fought on Aug. 1, 1759, was a decisive victory for Anglo-German troops under the command of Prince Ferdinand of Brunswick-Lüneburg (1721–1792) over the French. Five thousand French were killed or wounded, and several thousand more captured. The amphibious raid on the Breton shipbuilding port of St.-Malo was less successful than JD indicates here. While the British did destroy a great deal of French shipping, they withdrew without moving against the port itself for fear of a French counterattack. When Thomas Bligh (1685–1775) attacked again in September, he found that the French had reinforced the port, which, combined with bad weather, meant that he could land only 7,000 men before abandoning the attack. Between 750 and 1,000 British men were killed, wounded, or captured. See Anderson, *Crucible*, 299, 302–03, 378.

¹⁹ Exports from England and Wales increased from 1745 to 1750, when they were 75% above 1744 levels. Exports then declined over the next five years before rising again to record levels in 1761. See François Crouzet, "Toward an Export Economy: British Exports during the Industrial Revolution," *Explorations in Economic History* 17 (1980): 51.

²⁰ Justice 667. See also 3 & 4 Ann., c. 13 (1704): "An Act to prevent all traitorous Correspondence with Her Majesties Enemies."

²¹ Naval stores: "Articles or materials used in shipping or in the navy; *spec.* resinous products (as pitch, tar, turpentine, etc.) originally as used for waterproofing the hulls and rigging of wooden sailing vessels" (*OED*). The naval stores economy in the Carolinas was worth approximately £60,000 annually.

²² Ridotto: "An entertainment consisting of music, dancing, and sometimes gambling" (*OED*).

²³ Lat. Not with equal steps.

²⁴ That is, the mainland colonies.

²⁵ It appears the quotation comes from the unidentified source. See n. 12, above.

²⁶ Lat. It is a miserable slavery where the law is vague or uncertain; a version of the Latin phrase, *Misera servitus ubi Jus vagum aut incertum*.

²⁷ 2 Coke, *Institutes* 2: "[F]or as hath been said, this Charter is declaratory of the ancient Law and Liberty of England, and therefore no new freedom is hereby granted."

²⁸ Rom. 4:15: "Because the law worketh wrath: for where no law is, *there is* no transgression."

²⁹ *Ibid.* 2:3–15.

³⁰ 1 W. & M., c. 32 (1688): "An Act for the Better Preventing the Exportation of Wooll, and Encouraging the Woollen Manufactures of this Kingdom" was enacted in response to 12 Car. 2, c. 32 (1660): "An Act for Prohibiting the Exportation of Wool, Wool-fells, Fullers-earth, or Any Kind of Scouring Earth."

³¹ Carthew 396: "That when one Act is made *Explanatory* of another, this Court cannot carry the *Explanation* farther then is expressed in that Act; but upon an original Statute, the Court will make Construction according to Equity."

³² Just. Code, 1.14.9: "The most sacred laws which control the lives of men should be understood by all persons, so that their provisions being universally known, men may

avoid what is forbidden, and observe what is permitted. If, however, anything should be found to be obscure in these laws, it must be explained by the interpretation of the Emperor and their severity and want of conformity with humanity be corrected.” *The Civil Law*, transl. and ed. S.P. Scott, 17 vols. (Cincinnati: Central Trust Co., 1932), 12:88. A translation to match JD’s has not been found.

³³ Footnotes “a” and “b” were not found.

³⁴ It is unclear to what JD is referring.

³⁵ Lat. unless they have been publicly prohibited beforehand.

³⁶ Magna Carta (1225), c. 30: “All merchants, unless they have been publicly prohibited beforehand, shall be able to go out of and come into England safely and securely and stay and travel throughout England, as well by land as by water, for buying and selling by the ancient and right customs free from all evil tolls, except in time of war and if they are of the land that is at war with us.”

³⁷ JD reverses the order of the sentences: “The Magna Charta of England forbids the seizing and confiscating, in case of war, the effects of foreign merchants; except by way of reprisals. It is very remarkable, that the English have made this one of their articles of their liberty” (Montesquieu, 2:12 [bk. XX, c. 13]).

³⁸ Here, JD is referring to Montesquieu, 2:7, bk. XX, c. 6, “*The Spirit of England with respect to Commerce*.”

³⁹ JD is referring to Britain’s renewed efforts to stop illicit trade with France by seizing American ships engaged in flag-of-truce trade. See “Documents on the Flag-of-Truce Trade” in Volume One of the present edition.

⁴⁰ 6 Geo. 2, c. 13 (1733): “An Act for the Better Securing and Encouraging the Trade of His Majesty’s Sugar Colonies in America.” The act also imposed a duty of sixpence per gallon on foreign molasses imported into the colonies. The duties, meant to discourage trade with the French West Indies, was largely ineffective due to smuggling and bribery of customs officials.”

⁴¹ Lat. He who says all, excludes nothing. 4 Coke, *Institutes* 81.

⁴² 31 Geo. 2, c. 36, sec. 3 (1757): “An Act for Continuing Certain Laws Therein Mentioned Relating to British Sail Cloth ... and to the Encouragement of the Trade of the Sugar Colonies in America.”

⁴³ 6 Geo. 2, c. 13 (1733): The preamble reads, in part, “there shall be raised, levied, collected and paid unto the use of his Majesty, his heirs and successors, upon all rum or spirits of the produce or manufacture of any of the colonies or plantations in *America*, not in the possession or under the dominion of his Majesty ... the sum of nine pence.”

⁴⁴ 4 Bacon, *Abridgment* 644: “Words and Phrases, the Meaning of which in a former Act of Parliament have been ascertained, are, when used in a subsequent Act, to be understood in the same Sense.”

⁴⁵ 1 W. & M., c. 34 (1688): “An Act Prohibiting All Trade and Commerce with France”; 3 & 4 Ann., c. 13 (1704): “An Act Prohibiting All Trade and Commerce with France”; 13 Geo. 2., c. 27 (1740): “An Act for Prohibiting Commerce with Spain.”

⁴⁶ 9 Ann., c. 8 (1710): “An Act to Repeal the Act of the Third and Fourth Year of Her Majesty’s Reign, Intituled, *An Act for Prohibiting All Trade and Commerce with France*; so far as it Relates to the Prohibiting the Importation of French Wines.”

⁴⁷ “We henceforth strictly forbid to hold any Correspondence or Communication with the said French King, or his Subjects: And We do hereby command Our own Subjects, and advertise all other Persons, of what Nation soever, not to transport or carry any Soldiers, Arms, Powder, Ammunition, or other Contraband Goods, to any of the Territories, Lands, Plantations, or Countries of the said French King.” See *His Majesty’s Declaration Of War against the French King* (New York: J. Parker, 1756).

⁴⁸ A clear statement of this concept is in Grotius, *Rights* (1715) 1:123–24: “Of publick War, part is Solemn by the Law of Nations, and part is less Solemn.... Two things then are requisite, to make a War Solemn by the Law of Nations: First, that it be made by the Authority of those that have the Sovereign Power in the State: And then, that some Formalities be used ... But a publick War less Solemn, may be also without those Formalities.”

1 Hale, *Pleas* 163: “A general war is of two kinds: 1. *Bellum solemniter denuntiatum*, or *bellum non solemniter denuntiatum*, the former sort of war is, when war is solemnly declared or proclaimed by our king against another prince or state ... [and the latter] when two nations slip suddenly into a war without solemnity.”

1 Hale, *Pleas* 58: “*Nota*, this [trading with an invading army too strong to resist] was an act done for the security of the country in a time of actual war and invasion by enemies, and therefore rendred that by-law and the execution thereof justifiable by reason of that necessity, which would hardly have done it in time of peace. 2. But that, which this record principally evidenceth, is, that such a supply of the king’s enemies upon such a necessity in a time of war, and to prevent the devastation of the country, was not taken at all to be an adhering to, or treasonable aiding of the king’s enemies.”

⁴⁹ The Glorious Revolution, 1688–89.

⁵⁰ 12 Coke, *Reports* 74–76: “*Memorand*. That upon *Thursday, 20 Sept. 8 Regis Jacobi* [1610] I was sent for to attend the Lord Chancellor, Lord Treasurer, Lord Privy Seal, and the Chancellor of the Dutchy; there being present the Attorney, the Solicitor, and Recorder: And two Questions were moved to me by the Lord Treasurer; the one, If the King by his Proclamation may prohibit new Buildings in and about *London, &c.* the other, If the King may prohibit the Making of Starch of Wheat.... I said, that the King cannot change any part of the Common Law, nor create any Offence by his Proclamation, which was not an Offence before, without Parliament.... In the same Term it was resolved ... that the King by his Proclamation cannot create any Offence which was not an Offence before, for then he may alter the Law of the Land by his Proclamation in a high Point; for if he may create an Offence where none is, upon that ensues Fine and Imprisonment.”

⁵¹ 12 Coke, *Reports* 76: “Also the Law of *England* is divided into three Parts, Common Law, Statute Law, and Custom; but the King’s Proclamation is none of them: Also *Malum aut est malum in se, aut prohibitum*, that which is against the Common Law is *malum in se, malum prohibitum* is such an Offence as is prohibited by Act of Parliament, not by Proclamation.”

⁵² That is, Henry VIII.

⁵³ France, under the rule of Henry IV (1553–1610), was at war with Spain from 1595 to 1598, the final conflict in France’s Wars of Religion between Catholics and Huguenots that began in 1562.

⁵⁴ 3 Geo. 1, c. 1 (1716): “An Act to Enable His Majesty Effectually to Prohibit or Restrain Commerce with Sweden.”

⁵⁵ William Camden, *The History of the Most Renowned and Victorious Princess Elizabeth*, 4th ed. (London: M. Flesher, 1688), 448.

⁵⁶ For Grotius and Hale, see n. 48, above.

⁵⁷ This phrase does not appear in Coke, *Institutes*, but JD is probably referring to Coke’s exposition of the Magna Carta’s prohibition on trade with “Merchant strangers, whose Sovereign is in War with the King of *England*.” See 2 Coke, *Institutes* 57. JD might also be referring to a 1609 case on which Coke ruled as chief justice of the Court of Common Pleas, *Michelbourne v. Michelbourne*, Hill. 7 Jac. 1, C.B. (1609): “It was said by the Lord *Coke*, that no Subject of the King, may trade with any Realme of Infidells, without licence of the King.” See 2 Brownlow Goldesborough 296.

⁵⁸ 2 Coke, *Institutes* 63.

⁵⁹ Philip II of Spain (1527–1598) and Mary I of England (1516–1558) were married on July 25, 1554, until Mary's death. In June 1557, England declared war on France, which Mary's councilors opposed. The 5th Habsburg-Valois War lasted until 1559, by which time Elizabeth I had taken the throne.

⁶⁰ Sir Thomas Parker (c. 1695–1784) was an English jurist and lord chief baron of the Exchequer.

⁶¹ 3 Levinz 351–55, *Sands qui tam, &c. v. Sir Josiah Child, Franklin and Leach*, Pasch. 5 W. & M., B.R. (1693). Sands was about to sail his ship, *The Commerce of London*, when the defendants “prosecuted a Suit in the Admiralty for Stay on the said Ship, ’till Security given that they should not go traffick with Infidels within the Limits of the Charter of the *East-India Company*” (351). Sands then sued Child for wrongfully suing him. The court awarded him £1,500 in damages and double costs under 2 Hen. 4, c. 11 (1400): “A Remedy for Him Who is Wrongfully Pursued in the Court of Admiralty.” See also doc. 1:62.

It is unclear to what JD is referring in 1 Coke, *Institutes* 66, which discusses homage.

4 Coke, *Institutes* 279: “*Bracton* saith that an alien born cannot be a witness: which is to be understood of an alien Infidell.”

For *Omichund v. Barker* (1744), see doc. 2:17, n. 9, above.

2 Bacon, *Cases* 403: “It is a very narrow Notion, that no one but a Christian can be an honest Man.... I will not repeat what is said of this Assertion of Lord *Coke* by Sir *George Treby* in the *State Trials*, Vol. 7. 502 (a), tho’ I think it deserves every Epithet he has bestowd upon it; and I will add, I think when he talks in this Manner, he appears more like a Jesuit than a Lawyer. I will say very little of the Old Books *Bracton*, *Britton*, &c. small Weight is to be laid upon them, because they are general *Dic-tums* in Popish Times of Bigotry, when we carried on little Trade, except the Trade of Religion.”

⁶² Lat. which are necessary for divine religion.

⁶³ Here, JD is possibly referring to 3 Levinz 21, 1 Coke, *Institutes* 21, or 4 Coke, *Institutes* 21.

⁶⁴ Probably a reference to Grotius, *Rights* (1715) 3:1–36.

⁶⁵ Source not identified.

⁶⁶ Chancery: “The court of the Lord Chancellor of England, the highest court of judicature next to the House of Lords.” The court “consisted of two distinct tribunals, one ordinary, being a court of common law, the other extraordinary, being a court of equity. To the former belonged the issuing of writs for a new parliament, and of all original writs. The second proceeded upon rules of equity and conscience, moderating the rigour of the common law, and giving relief in cases where there was no remedy in the common-law courts” (*OED*).

⁶⁷ 1 Hale, *Pleas* 13: “Penalties therefore regularly seem to be *juris positivi, & non naturalis*, as to their degrees and applications, and therefore in different ages and states have been set higher and lower according to the exigence of the state and wisdom of the law-giver.”

⁶⁸ Vaughan 345.

⁶⁹ Lat. wrong in itself.

⁷⁰ Lat. wrong because it is prohibited.

⁷¹ Vaughan 354.

⁷² This extended quotation is compiled from secs. I and II of c. 22. See Grotius, *Rights* (1715) 3:336–37.

It is unclear to what source the “blank paper” quotation refers. It is possibly a reference to the unidentified source that JD is responding to in this essay.

⁷³ A reference to “Harley’s Dozen.” In late 1711, Robert Harley, first earl of Oxford and Mortimer (1661–1724), faced increasing Whig opposition in the House of Lords to the preliminary peace brokered with Spain to end the War of the Spanish Succession. His recent elevation to the peerage on May 23, 1711, combined with public sympathy for him after a recent assassination attempt on March 8 by a French spy, meant his prestige was at a career high, but it was not enough to stop the resurgent Whigs in the House of Lords from stymying his plans for peace. When Parliament adjourned for Christmas, however, Oxford persuaded Queen Anne to dismiss the peers who opposed his efforts for peace and to create twelve new lords to give his ministry a majority.

⁷⁴ Grotius, *Rights* (1715) 2:402: “For such as are sent by *Provinces, Cities*, or any other *subordinate Powers*, are not governed by the *Law of Nations*, which is different between Nations, but by the *Civil Law*.”

Just. Digest 1.2: “Concerning the Origin of Law and of All Magistrates, Together with a Succession of Jurists.”

⁷⁵ Here, JD might be referring to Julius Caesar (100–44 BC) divorcing his second wife, Pompeia, after the Bona Dea scandal in which Clodius Pulcher allegedly tried to seduce her. Caesar, to maintain his reputation, stated that his household must be beyond suspicion.

⁷⁶ The correct citation is 2 Coke, *Institutes* 58. See also docs. 1:62, 1:63.

⁷⁷ Justinian I (c. 483–565) was the Byzantine emperor between 527 and 565.

⁷⁸ Praetor: “One of the magistrates annually elected to the judiciary of Rome, subordinate to the consuls particularly in administration of the provinces” (*OED*).

⁷⁹ Lat. on the office of the president.

⁸⁰ Lat. “Although he who presides over the province ought to perform the duties and offices of all the Magistracies of Rome, nevertheless one should consider not what has been done in Rome but what should be done in Rome.” Just. Digest 1.18.12.

⁸¹ Lat. “The matter in itself is very dangerous—that is, to cast judgments by using examples and not laws—since judgments are altered by the slightest of persons, or by the slightest of winds or circumstances.” Bodinus (Jean Bodin), *De Republica Libri Sex* (Paris: J. Du-Puys, 1586), 755.

⁸² Cicero wrote that before battle, Romans observed the feeding behavior of sacred chickens. If they showed good appetite, the gods would favor the Romans.

⁸³ See n. 55, above.

⁸⁴ See n. 48, above.

⁸⁵ Diego de Covarrubias y Leyva (1512–1577) was a jurist and Catholic priest.

⁸⁶ 2 Bacon, *Cases* 403. Willes dismissed the defense’s appeals to Covarrubias’s writings as he did their appeals to Coke.

⁸⁷ Pope Gregory I (c. 540–604) was the bishop of Rome from 590 until his death.

⁸⁸ Hale, *Common* 27–28.

⁸⁹ Hale, *Common* 71.

⁹⁰ Hale mentions laws obtaining their force by “immemorial Usage and Custom,” or similar phrasing, multiple times. See Hale, *Common* 2–4, 23, 28, 67.

⁹¹ Novel: “A new decree or constitution, supplementary to a codex; esp. any of those enacted by the emperor Justinian” (*OED*).

⁹² Fifth monarchy: “The last of the five great empires referred to in the prophecy of Daniel (Dan. ii. 44), in the 17th cent. identified with the millennial reign of Christ predicted in the apocalypse. Also *attrib.*, esp. in Fifth-monarchy man *n.* one of those in 17th cent. who believed that the Second Coming of Christ was immediately at hand, and that it was the duty of Christians to be prepared to assist in establishing his reign by force, and in the meantime to repudiate all allegiance to any other government” (*OED*).

⁹³ Grotius, *Rights* (1715), 2:400–18, “*Of the Rights of Ambassage.*”

⁹⁴ *Ibid.*, 3:91: “This I shall also here repeat, that the Goods of our Enemies may be taken away from them, not only by plain Force, by the Law of Nations, but even by Fraud, so it be without Treachery; nay, in this Case, we may use the Perfidiousness of others.”

⁹⁵ 25 Edw. 3, c. 2 (1351): “A Declaration Which Offences Shall be Adjudged Treason.”

⁹⁶ Grotius, *Rights* (1715), 3:6: “He is to be reputed as siding with the Enemy, who supplies him with things necessary for War. As to the second sort of things [goods that serve only for pleasure], there is no just Cause of Complaint. Thus *Seneca* says, I will be grateful to a Tyrant, if what I present him with neither encreases, nor confirms his power of ruining the State, for such things a Man may give him without contributing to the common Calamity.... As to the third sort of things of doubtful Use [goods useful both in peace and war], we must distinguish the present State of the War. For if I cannot defend my self, without intercepting those things that are being sent to my Enemy, Necessity (as I have said before) will give me a good Right to them, but upon Condition of Restitution, unless I have just Cause to the contrary.”

⁹⁷ See n. 55, above.

⁹⁸ “A Copy of the Declaration of War of the King of Great-Britain against the French King,” *Am. Weekly Merc.*, May 24, 1744.

⁹⁹ Montesquieu 2:7 (bk. XX, c. 6): “The Tariff, or customs of England, are very unsettled, with respect to other nations; they are changed in some measure, with every parliament, either by taking off particular duties, or imposing new ones. They endeavor by this means still to preserve their independence. Supremely jealous with respect to trade, they bid themselves but little by treaties, and depend only on their own laws.”

¹⁰⁰ Montesquieu 2:7 (bk. XX, c. 6): “Other nations have made the interests of commerce yield to those of politics; the English, on the contrary, have always made their political interests give way to those of commerce.”

¹⁰¹ The War of the Austrian Succession (1740–48), and its North American phase, King George’s War (1744–48).

¹⁰² Montesquieu 2:5 (bk. XX, c. 5).

¹⁰³ Philip Dormer Stanhope, fourth earl of Chesterfield (1694–1773).

¹⁰⁴ *The History and Proceedings of the House of Lords*, 8 vols. (London: E. Timberland, 1742–44), 5:213: “It is an Ebullition, an Excrescence,—it is a Speck upon the Eye of the Political Body, which I can never touch but with a gentle,—with a trembling Hand, lest I destroy the Body, lest I injure the Eye upon which it is apt to appear.” This speech opposed a bill to license the stage.

¹⁰⁵ 6 Geo. 1, c. 18 (1719): “An Act for Better Securing Certain Powers and Privileges Intended to be Granted by His Majesty by Two Charters for Assurance of Ships and Merchandizes at Sea, and for Lending Money on Bottomry [‘The action or practice of pledging a ship, its cargo, etc., as security for money lent’ (*OED*)]; and for Restraining Several Extravagant and Unwarrantable Practices Therein Mentioned,” established two insurance companies—the London Assurance and the Royal Exchange Assurance. 14 Geo. 2, c. 37 (1740): “An Act for Restraining and Preventing Several Unwarrantable Schemes and Undertakings in His Majesty’s Colonies and Plantations in America,” extended the provisions of the 1719 act to the colonies.

¹⁰⁶ In the 1750s, the average price for a slave in the Caribbean and South Carolina was approximately £35. See Daniel Eltis, Frank D. Lewis, and David Richardson, “Slave Prices, the African Slave Trade, and Productivity in the Caribbean, 1674–1807,” *Economic History Review* 58, no. 4 (2005): 679; Daniel Eltis, Frank D. Lewis, and David Richardson, “Slave Prices, the African Slave Trade, and Productivity in Eighteenth-Century South Carolina: A Reassessment,” *Journal of Economic History* 66, no. 4

(2006): 1056. Slave prices were rising when JD wrote this essay. The average price of a male slave in British America was between £23 and £27 during the first half of the 18th cent., rising to £31.9 between 1748 and 1757, then to £35 between 1758 and 1767, and then to £40.7 between 1768 and 1775. See David Richardson, “The Slave Trade, Sugar, and British Economic Growth, 1748–1776,” *Journal of Interdisciplinary History* 17, no. 4 (1987): 744. See also doc. 2:79, below.

¹⁰⁷ A reference to English methods of fowling.

¹⁰⁸ Louis XV (1710–1774) reigned in France from 1715 to 1774.

¹⁰⁹ The passage appears to be on p. 4.

¹¹⁰ That is, Marcus Tullius Cicero.

¹¹¹ See n. 94, above.

¹¹² See n. 17, above.

¹¹³ See n. 20, above.

¹¹⁴ Here is an indication that JD intended to publish this essay. His deletion of only the middle letters would have rendered these words in print “E—h M—y,” which would have protected him from the charge of seditious libel had his true identity been revealed.

¹¹⁵ On May 13, 1622, the Dutch States-General issued an edict limiting the application of a previous edict of April 1 that voided Dutch insurance on Spanish property. On Dec. 31, 1657, that body issued another edict against the Portuguese decreeing against insuring their property. See Cornelius van Bynkershoek, *Quaestionum Juris Publici Libri Duo* (Leiden: Joannem van Kerckhem, 1737), c. 21.

¹¹⁶ It is unclear to whom JD is referring.

¹¹⁷ Lat. out of the aftermath; with retroactive force.

1761

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[JD?], Obituary for John Moland, *The Pennsylvania Gazette*, January 8, 1761

Considering the language and JD's close personal and professional relationship with John Moland (born c. 1700) and his family, JD likely authored this obituary for his mentor, who died on December 30, 1760, and was buried on January 2, 1761. As is evident from subsequent correspondence between members of the Moland family and JD, the Molands were not sufficiently literate to compose such a tribute.

Catherine and John Moland had eight children: John, Jr.; Thomas; Elizabeth; Hannah; William; Robert; Joseph; and Grace. John Moland's last will and testament, dated November 8, 1760, stipulated that Elizabeth, Hannah, Grace, and John, Jr., would be executors of his estate, and Catherine could live in and use the house and plantation, as well as receive an allowance of £14 per year. But the will and subsequent letters to JD show that there was discord in the family. The will stipulated that Catherine could receive her inheritance only on the condition that she "doth not Converse with her Son Thomas, to whom I leave One Shilling only." Then, on November 29, Moland discharged John, Jr. from his position as executor and revoked the bequest to him of his watch, sword, and cane. He was also admonished to aid his sisters in managing their affairs. In 1758, he attempted to work as an apothecary for the Pennsylvania Hospital, but ill health caused him to resign.¹ Thus Moland also stipulated "that the Druggs my s[ai]d Son John First took up, be paid for Out of my Estate." Two younger sons Robert and William received nothing but the order that they were "to be Bred up & put Out Apprentices at [th]e Expence of & Out of the Issues & Profits of my Estate."²

When Moland died, his family turned to JD for support—legal, financial, and moral. His relationship with them continued at least into the 1780s. Unfortunately, the extant correspondence is largely incoming, but even that shows a degree of tension among members of the family and between them and JD, mainly concerning their financial dependence on him.

PHILADELPHIA, January 8.

“On Friday last were interred, at his Country Seat, near this City, the Remains, of JOHN MOLAND, Esquire; who was one of the Governor’s Council, and an Attorney and Counsellor at Law, in this Province.³ By a generous and polite Education—by a severe and steady Application to Study—and by a uniform and zealous Attachment to the Interest of his Client, joined to a clear Apprehension and tenacious Memory, he was eminently and justly distinguished, for an easy Dignity in social Life—superior Abilities in his Profession—extensive Knowledge in polite Literature, and as a warm and faithful advocate.”

¹ Thomas G. Morton and Frank Woodbury, *The History of the Pennsylvania Hospital, 1751–1895* (Philadelphia: Times Printing House, 1895), 526.

² John Moland Will, Register of Wills, vol. 3:51, Bucks Co. Courthouse, Doylestown, Pa.

³ Located in Hartsville, Bucks Co., the Moland House was built in c. 1750.

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Notes on Judicial Tenure, [c. February 1761]

This and doc. 2:31, below, treat the matter of judicial tenure under various circumstances in Pennsylvania after the death of George II on October 25, 1760, of which the colonists in Pennsylvania learned around January 8, 1761.¹ The question of judicial tenure was an ongoing controversy between colonial Americans and British authorities that escalated during the 1760s and 1770s. Whether a judge held office during good behavior (*quamdiu se bene gesserint*), as many colonists preferred, or at the pleasure of the king or his representative (*durante bene placito*), had been decided in England by the Act of Settlement of June 12, 1701, which provided that future judges’ commissions be made at the pleasure of the king, “but upon the address of both houses of Parliament it may be lawful to remove them.”² In the British American colonies, however, the issue remained unresolved. Disputes over judicial tenure arose in Jamaica, New York, New Jersey, North Carolina, South Carolina, and Massachusetts, as well as in Pennsylvania in the early 1700s and again in 1759.

In 1759, the Pennsylvania Assembly passed a supplement to the May 22, 1722, judiciary act that included a provision that judges of the Court of Common Pleas in each county and the justices of the Supreme Court were to hold their offices during good behavior, with removal possible upon address of the Assembly.³ Then, Lieutenant Governor William Denny issued commissions during good behavior

for five judges of the Lancaster County Court of Common Pleas, Emanuel Carpenter (c. 1702–1780), Isaac Saunders (1708–1781), Calvin Cooper (d. 1779), John Hobson, and John Douglas (died c. 1781).⁴ Considering their charter rights were being infringed upon, in protest, proprietors Thomas and Richard Penn petitioned the Board of Trade, which considered the statute on June 3, 1760, and determined against it on June 24.⁵ The statute was then repealed by the King-in-Council on August 27.⁶ After being notified of both the repeal and the death of George II, James Hamilton, Denny's successor, issued writs of supersedeas on January 30, 1761, vacating the commissions.⁷

The judges, however, refused to recognize the writs and issued arguments similar to JD's here, suggesting he may have played some role in the defense of their tenure. They claimed "that their patents have no reference to the [1759 statute], nor are affected by the repeal of the act, but are good at common law, and being during good behavior give them an estate for life and a freehold in their offices, and that their patents cannot be determined or vacated but for misbehavior in their offices."⁸ JD also addressed arguments raised by the proprietors, such as the significance of the persons appointed being referred to as "judges" or "justices."⁹

The proprietors requested an opinion from Attorney General Charles Pratt (1714–1794) as to whether Hamilton's vacating of the commissions was valid.¹⁰ On May 13, 1761, Pratt issued an opinion on the three queries presented to him: first, that since the commissions were issued immediately upon the enactment of the 1759 statute, they were *ipso facto* void upon the disallowance of that statute; second, if the commissions had been issued before the enactment of the statute to be held during good behavior, they would have been good, although issued in breach of proprietary instructions; and third, he could not tell why these were supposed to be the king's judges, but if they were, he doubted the circumstances of English judges were applicable to those in the colonies. Ultimately, on June 10, he issued his finding that the demise of the Crown had no effect on the commissions, first, because they were not the king's judges; and second, because they were the Assembly's judges, that body constitutes their tenure.¹¹

The matter of a judiciary independent not just of executive but also legislative power as a matter of colonists' rights concerned JD enough for him to include a call for tenure during good behavior in the ninth number of his *Farmer's Letters*, in which he repeated the idea below that there was "More Occasion for these Demands in the Colonies than in Great Britain."¹²

[page fragment]¹³

All Judges were appo[inte]d by Patents¹⁴ till E[dward] 1st¹⁵ Time who alterd the C[hief] J[ustice]'s Constitution to a Writ¹⁶—to lessen his Author[ity]. 4 Ins. 74.¹⁷

And determind in 5 E. 4. by all the Judges in the Excheq[ue]r Ch[ambe]r that no Justice cou'd be constituted {but the C[hief] J[ustice]} but by Pat[en]t or Comm[issi]on.¹⁸ {Jenk. Cent. 123.} 4 Ins. 75.¹⁹

The King's Assent by Patent—is the same as if he was [pre]sent. 4 Ins. 28.²⁰

2 Ins. 175— 4 Ins. 76. &c Judges Comm[issi]ons were dur[in]g Pleasure & theref[ore] determind by the King's Demise. Moore pl. 311. Bacon's Ab. tit. Offices 733.²¹

Obj[ecti]on— Calld Judges in their Comm[issi]ons. Answ[er]. {1.st} E[dward] 1.st alterd Summus Justiciarius into Capitalis Justiciarius— 4 Ins. 74.²²

2^{ly} The Act of Assembly does not require them to be calld Justices but ~~[th[at] the?] [illegible] of [their] [Authorit[y]]~~

3. Judge & Justice are nomina convertibilia²³—for the Act of Settle[m]ent uses the word **Judges**—& yet in all [Pro]ceed[in]gs the Judges are calld Justices—& a Gr[an]t to be a Justice does not deprive them of their Author[ity] dum se bene &c²⁴

[in left margin:] {Jenk. 214. 4 Ins. 75.}

This Quibble fit for Ja[me]s 1.st

Vide 4 Ins. 75. [page break]

4 Ins. 117—

2 Shower Harcourt v Fox

Bacon's Ab: tit. Offices.

Shower's Parl^t. Cases. Fox & Harcourt. & 557 The {Opin[ion] of the Att[orne]y Gen[er]al}

Co. Litt. 42. Carth. 426.²⁵

1. Q[uesti]on. If the Judges can be deprivd of a Freehold w[ith]out a Trial on a Sci[re] Fac[ias]²⁶

2.^d Q[uesti]on. Where is the Oath of Allegiance [to] be taken & before whom?²⁷

Diff[erence] betw[een] a Writ & Commission— 4{3} Ins. 164. F. N. B. 110.²⁸

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1, 2, & 3 Charters— Quamdiu &c.

Judex est Lex loquens.²⁹

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Dyer tit. Sci[re] Fac[ias]³⁰

=={Rob[er]t} Blage's Case— 3. H. 8. Dyer 197.

Archer's Case— Sir Tho[ma]s Raym.

Waller's Case & 1 Show. 510.

Sid. 2. Bac. Ab. tit. Off. 743.³¹ [*page break*]

[*page fragment*]³²

4. If a Man is so describd th[at] it is known who is meant it is all the Law requires. 1 Ins. 3. a. 1 Show. 517.³³

5. "Judge" is a Name of Dignity, & a man must be calld so in a Writ. Jenk. Cent. 209.³⁴

6. Power gr[an]ted in the Charter to make Judges in what Form the [Pro][pri][e]tor &c shall think fit: First &c Frames [acc[or]d[ing]ly]³⁵

Judges belong[ing] to Corp[orati]ons do not determine by the King's Demise. Jenk. 308. [2] Ins. 175. 7 Ins. 30—b.³⁶

No Diff[erence] between Jud[icia]l & Ministerial Officers but only between Offices relat[ing] to the Adm[inistrati]on of Justice & others. 9 Co. 97. 1 Ins. 3. b. 1 Show. pa. [*blank*]. in my Lord Holt's Argument.³⁷

1st Obj[ecti]on— Th[at] the Act is repeald— Answ[er] Comm[issi]ons dur[ing] good Behaviour good at Com[mon] Law—

2.^d Obj[ecti]on. Calld Judges & not Justices— Vide Supra.

3.^d Obj[ecti]on. L[or]d Holt's Opinion— Answ[er]. Distinction between Writ & Patent— No Contention but Sir J[oseph] J[ekyll]³⁸ who kept his— & his ~~only~~ {no more than} dur[ing] good Behaviour: in fact—

[Pro][per] to conclude with some Reflections on the Reasonableness of the Law

Justum & tenacem &c³⁹ [*page break*]

To have Judges commissiond dur[ing] Good Behaviour appears of Conseq[ue]nce] from the Nature of such Comm[issi]ons— from the Care with wh[ich] they have been establishd in Engl[an]d— & the Endeavours to establish them in Ireland—

These Comm[iss]ions will determine with the Lives of the Judges but the Influence of a Preced[en]t ag[ains]t their Authority may extend to Posterity—and the Resolution of these Judges in maint[ainin]g their ~~Right~~ {Author[ity]}—may perpetuate a warm Remembrance of the Rights they demand— These their Motives &c

We are
Englishmen—
Same Rights.

The Engl[ish] Hist[ory] noth[in]g but a Catalogue of Demands of Rights & Refusals.

No [Pro]fit to them, the Law being repeald— Much Trouble— No Power—it being divided amongst many—

But their Demand is keep[in]g up the Claim as it were to this Right—
English History full of {those} Claims wh[ic]h were chiefly settled at the Revolution—⁴² Bolingbroke's Opinion—⁴³

By 13 or 15 G. 2.⁴⁰ People born in the Col[onie]s declar'd Natural born Englishmen.

More Occasion for these Demands in the Colonies than in Great Britain— Prærog[ative] allowed more Ext[en]t here than at Home— {We are struggling for those Liberties now that Engl[an]d struggled for so long before the Revolution—Let us not assist in fix[in]g our own Shackles.}

==

2 Ways to [pro]ceed on this Occasion— 1st— To avoid associat[in]g with these Judges—wh[ic]h is a kind of **Force**—without any other Reason or Law than Inclination— {In the same Manner might deprive Me of my Estate.}

Cutting the Gordian Knott⁴¹ &c

These Judges either have a Right or they have not—&c

2.^{ly} Enquiring into their Authority, & satisfy[in]g yourselves Whether they have not a Right to sit—till a Jud[icia]l Determ[inati]on be made ag[ains]t that Right.

To shew that they have such a Right—
Two Points—are to be consid[ere]d

- 1st — That they have a Freehold⁴⁴
- 2.^{ly}— That they cannot be deprivd of this Freehold—but by a Determin[ati]on in a due Course of Law— [page break]
Adm[inistrati]on of Justice belongs to the King—by Prærogative—

But he must appoint Persons to distribute it— These Comm[issi]ons cannot be gr[an]ted to a Man & his Heirs or to a Man for Years—because his Heirs Ex[ecu]tors or Adm[inistrat]ors may not have Knowledge & Integrity sufficient—

But the usual Gr[an]ts have been “dur[ing] Pleasure” or **Good Behaviour**—

The common Way of gr[an]t[ing] Judges Comm[issi]ons were dur[ing] Pleasure. 2 Ins. 175. 4 Ins. 74. 75. 100. And hence arose the Notion of their Comm[issi]ons being determ[in]ed by the King’s Demise—**because** depend[ing] on his Pleasure—they could not exist—when that Pleasure did not exist—as is exp[re]ssly said in 2 Ins. 175. Moore’s Rep. pl. 311.⁴⁵

“It is holden in our Books (says Coke) that albeit the King dieth yet the Coroner, because he is elected by the Freeholders of the County by Writ, & returnd of Record in the Chancery, wh[ich] is a Jud[icial] Act, remaind, & so of the Verderor:⁴⁶ Otherwise it is of Judges & Justices, that hold their Places by Writ, Comm[ission], Letters Patents, or otherwise at Will, wh[ich] might be a Reason wherefore the Sheriff of antient Time was eligible, for that he had Custodiam Comitatus,⁴⁷ & a Principal Conservator of the Peace, & therefore his Authority shoud not cease by the death of the King no more than of the {Coroner.}”⁴⁸

So Moore. “Walmesley⁴⁹ movd that where an Estate is continued during the Pleasure of the King, if the Demise of the King determines the Estate. And all the Court agreed, that the Demise of the King has determind his Will, as Justices of the Bench are Justices during Pleasure, & the Demise of the King is a Determ[in]at[i]on of their Patents. And Anderson⁵⁰ said, if the King grants a Rent during Pleasure, the Demise of the King is a Determ[in]at[i]on of the Rent. Meade⁵¹ took a Diversity, where the Pleasure is expressd “the Pleasure of the King in general” [*page break*] There it seems that the Demise is not a Determination thereof: but where there is any word of Demonstration, as “of the said King” or “the King that now is” it seems the Pleasure determines by the Demise of the King: For in the {is} [sai?] case, the King never dies as King, but his natural Body dies; And Words of Demonstration are to be referd to his natural Body, & Death is always a Determination of the Pleasure.” See 10 H. 7. fo. 7. b.⁵²

So Bacon's Ab. 3 Vol. pa. 733. says the Judges Com[missi]ons usd to be gr[an]ted ~~commonly~~ "dur[in]g Pleasure" & every Author[ity] of their Comm[issi]ons being determ[in]ed by the King's Demise relates to such Comm[issi]ons—& I defy any [Per]son to shew any Author[ity] that Comm[issi]ons dur[in]g Good behaviour determine by the King's Demise—except the Hint taken from Raymond; wh[ic]h I shall answer by & by.⁵³

So far from it that there are many express Author[ities] th[at] Comm[issi]ons dur[in]g Good Behaviour are determinable only by a breach of the Term on wh[ic]h they are gr[an]ted.

In a little Time I have found many of these Com[missi]ons gr[an]ted at Com[mon] Law— One Blage was made a Baron of the Excheq[ue]r in 3 Year of H. 8. Dyer 197—b. Such was Sir John Waller's Comm[issi]on & M^r. Justice Archer's in Cha[rle]s 2. time— 1 Show. 510. Such were the Comm[issi]ons gr[an]ted by Cha[rle]s 2. at the Restoration to Sir Rob[er]t Foster & Sir Rob[er]t Hide Justices of B. [*illegible*]{C.} & to Sir Tho[ma]s Mallett Justice of B.R. Sid. 2.⁵⁴

[*in left margin:*] {Orig[inal]ly all Judges & Off[ice]rs relat[in]g to Justice were Quam diu se bene gesserint. Arg[uen]do. 1. Show. 428.⁵⁵}

Thus these Comm[issi]ons are no Innovations— The King might gr[an]t them & did but very sparingly till the Revol[uti]on—wh[ic]h was a new Magna Charta to Engl[an]d—i.e. did not gr[an]t new Rights—but declar'd & secur'd old Rights as my L[or]d Coke says Magna Charta did & as the Parl[iamen]t resolv'd they did in insist[in]g on the Clause "during Good Behaviour in the Act of Settlem[en]t"⁵⁶

What then was meant by these Lovers of Liberty? That Judges who were to determine their Lives Liberties & Properties shoud be independ[en]t on the Crown—& be enabled to smile at the Frowns of a Prince— Justum & tenacem propositi virum &c [*page break*] They meant to give him a permanent Estate—dur[in]g Life—determ[in]able only on Misbehaviour: Declar[in]g this to be the Right of the Subject.

The Act of Settlem[en]t call'd an Act for the better secur[in]g the Rights &c⁵⁷

That a Gr[an]t of any Est[ate] dur[in]g good Behaviour is an Estate for Life—appears from the Law Books in every Age. My L[or]d Coke in 1 Ins. 42. a. says, "If a man grant an Estate to a Woman, dum sola⁵⁸ suit, or durante Viduitate,⁵⁹ or quamdiu se bene

gesserit, or to a man & a Woman during the Coverture,⁶⁰ or as long as the Grantee dwell in such a House, or so long as he pay £10 &c or untill the Grantee be [pro]moted to a Benefice,⁶¹ or for any like uncertain Time, wh[ich] time as Bracton⁶² says, is tempus indeterminatum:⁶³ In all these Cases, if it be of Lands or Tenem[en]ts, the L[ess]ee hath in Jud[gmen]t of Law an Estate for Life determinable, if Livery⁶⁴ be made; & if it be of Rents, Advowsons,⁶⁵ or any other thing that lies in Grant, he hath a like Estate for Life, by the Delivery of the Deed, & in Count or Plead[ing] he shall alledge the Lease & conclude, that by Force thereof he was seized generally for Term of his Life.” Coke cites 36{7} H. 6. 27. 26 E. 3. 69. 3 E. 3. 15. 14 H. 8. 13. Fleta Bo. 3. ch. 12.

Obj[ecti]on— This does not extend to Offices relat[ing] to the Adm[in]istration of Justice.

Ans[er]— This gratis dict[um]⁶⁶—for the same Words must always have the same Mean[ing]—& no Reason why those Offices should not be filld in the best Manner—as this is— But as a [per]fect Ans[er] to this Obj[ecti]on—in the celebrated Case of Harcourt & Fox reported in 1 Show. 4 Mod. & Carth.⁶⁷ the Judges Eyres, Gregory, Dolben & Holt⁶⁸ were unanimously of Opinion that the Off[ice] of Clerk of the Peace gr[an]ted dur[ing] Good Behav[iour] was an Estate for Life—

In the Argum[en]t of th[at] Case—the Att[orne]y Gen[era]l (& Att[orne]y Generals {&c}) declard expressly “That when an Office is gr[an]ted Quamdiu se bene gesserit, it is a Freehold, & to last during the Parties Life. It is so even in the Case of the King, whose Grant shall be taken most strictly against himself. If the King grant an Office Quamdiu se bene gesserit, it is a Freehold for Life. 3 Ass. 4. pl. 9.” 1 Show. 557.⁶⁹

Obj[ecti]on. This Case does not relate to a Jud[icia]l Office—but a Ministerial Office.

Ans[er]. No Distinction in the Books between Officers except as to Name, but [*page break*] but between those wh[ich] relate to the Adm[in]istration of Justice & those wh[ich] do not— This & no other is to be met with in 1 Ins. 3. b. 9 Co. 97—⁷⁰ Where it is said such Off[ice]s cant be gr[an]ted for Y[ea]rs or in Rev[ersi]on—but others may be—& the Dist[incti]on now made, is not assignd all thro[ugh] Harcourt’s Case—nor any where else—& what was alledgd by Powys⁷¹ in argu[ing] was not denied—th[at] not only Judges but all Off[ice]rs relat[ing] to the Execution of Justice were for Life, removable for Misbehaviour. [*in left margin:*] {The Off[ice]

of Master of the Rolls gr[an]ted for Life—to Justiceship of Chester.} ⁷²

But to put this beyond all Doubt that the same Words have the same Mean[in]g when applied to a Jud[icia]l Office—he may only repeat Justice Gregory’s Words in giving his Opin[i]on in the above Case—1 Show. 523. “I conceive (says he) that by this Act, the Clerk of the Peace hath his Office for his Life, by these Words, **To have & enjoy so long as he shall well demean himself in the Office.** [”] If these Words had been annex to a Grant of any other Office in Westminster Hall, without all Question the Grantee had been an Officer for Life. ⁷³

To the same [Pur]pose—but much stronger are the Words of the Great L[or]d C[hief] J[ustice] Holt—“I am the more inclin’d (says he) to be of Opinion, that this is an Estate for Life, because I knew the Temper & Inclination of the Parliament, at the Time when this Act was made; their Design was, that Men shoud have Places not to hold precariously or determinable on Will & Pleas[ure], but have a certain durable Estate, that they might act in them without Fear of losing them; We all know it, & our Places as Judges are so settled, only determinable on Misbehaviour.” 1 Show. 535. ⁷⁴

Certainly it is unnecessary to add any other Author[it]ies to these great ones—but shall add ano[the]r expressly in Point—as to a [*page break*]

My L[or]d Coke in his 4 Ins. 117. says, “The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fixd Estate (it being an Estate for Life, than the Justices of either Bench, who have their Offices but at Will.” ⁷⁵

[*several blank lines*]

Obj[ecti]on. My Lord Holt’s Opinion th[at] his Comm[issi]on determin[ine]d by the King’s Demise.

Ans[we]r. That was by Writ—and all Writs determine by the Demise. 7 Co. 30. ⁷⁶ The King’s Assent by Patent under the Great Seal is the Same as if he was actually [pre]sent. 4 Ins. 28. ⁷⁷

All Judges were appointed by Pat[en]t till E[dward] 1st Time—Who alterd the Method of constitut[in]g the Chief Justice—to a Writ—on [pur]pose to lessen his Author[it]y 4 Ins. 74. ⁷⁸

And determ[in]ed in 5 E. 4. by all the Judges in the Exchequer th[at] no Justice could be constituted but by Pat[en]t or Comm[issi]on—except the C[hief] J[ustice] Jenk. Cent. 123.⁷⁹ So in 4 Ins. 164—⁸⁰ Divers Just[ices] hav[ing] their Author[ity] by Writ—tho[ugh] in the same Words as a Comm[issi]on—held void. This Method of creat[ing] continues still, & therefore Holt thought his Comm[issi]on determ[in]ed as appea[rs] by read[ing] it—& compar[ing] it with Raym. 769⁸¹—where the Doubt was upon a Patent.

This confirmd too by Sir J[oseph] Jekyll's Case⁸²—for it does not appear his Office was gr[an]ted to him for Life—as it says in the Case of Trevor—⁸³ But if it was—yet Quamdiu &c is as much an Est[ate] for Life as app[ea]rs from the preced[ing] Determ[inati]ons & in 4 Ins. 117—it is expressly declar'd th[at] a Gr[an]t Quamdiu &c & for Life are exactly the same—Mention[ing] the C[hief] Baron's Comm[issi]on [page break] Quamdiu &c & th[at] it gives an Estate for Life, he says “And Quamdiu se bene gesserit must be intended in Matters concern[ing] his Office, and is no more than the Law woud have implyd, if the Estate had been gr[an]ted for Life.”⁸⁴

Trevor held his Place for Life yet gave it up.

Objecti]on. That there is no Statute here for such Comm[issi]ons.

Answer. The Case just ment[i]one]d in 4 Ins. was before the 12 & 13 Will. 3. & yet an Estate for Life— & So was the Case of Harcourt & Fox—⁸⁷ Besides the Stat[ute] does not say an Est[ate] for Life—but the Judges decl[are] what is the Mean[ing] of the Words Quamdiu &c in Law.

Objecti]on. They are call'd **Judges** in their Comm[issi]ons: but the Act for erect[ing] Courts mentions Jus-tices.

Answer. The Act does not require them to be call'd **Jus-tices** but says [Per]sons shall be appointed &c Judge & Justice are “nomina convertibilia,” for the Act of Settlem[en]t uses the Word

Jenk. Cent. 214.
4 Ins. 75.⁸⁵

Judges & Justices
Synonymous
Words Charter—
Lawbook 10.
385. 390. 93. If
not good now—
then all the past
[Pro]ceed[ing]s
are void.

“Judges” & yet in all jud[icia]l [Pro]ceed[ing]s
since they are calld **Justices**— King Ja[me]s
[per]haps woud have quibbled away this im-
port[an]t Act.

All the Law requires for a Man to take any
Grant is that he be describd so as to be known.
1 Ins. 3. a.⁸⁸

Judge is a Name of Dignity & a Man must
be calld so in a Writ. Jenk. Cent. 209.⁸⁹

Obj[ecti]on.
Stat[ute] 6. Ann.
c. 7.⁸⁶ Answ[er].
Th[at] designd
for other
Off[ice]rs as well
as Judges—
And was
putt[ing] a
controverted
Point so far out
of Dispute for
the Public
Good, other
Judges besides
those of
Westm[inste]r
Hall.

E[dward] 1.st alterd the title of **Summus**
Just[iciariu]s into **Capitalis** 4 Ins. 74.⁹⁰

Power gr[an]ted in the Charter to make
Judges in what Form the [Pro][pri]e[tor]
pleases &c The 1st 2.^d & 3^d Frames of
Gov[ernmen]t gr[an]ted Judges to be
Quamdiu &c⁹¹

Since the Charter is ment[ione]d it may be
[pro][per] to observe that Judges belonging to
Corp[orati]ons dont determine by the Kings
Demise. Jenk. Cent. 308. 7 Co. {30. b.}⁹² [*page
break*]

2.^d Point. That the Judges cannot be deprivd of this
Freehold but by a Determ[inati]on in a due Course
of Law.

Little necessary on this Head: Magna Charta ch. 29.⁹³

The usual Way of [pro]ceed[ing] is by Sci[re] Fac[ias]
Bacon’s Ab. tit. Offices. Dyer 197— b. 4 Ins. 72.

Archer’s Case— Sir Tho^s. Raym. 217.⁹⁴

No other Remedy as no Action can be brou[gh]t by the Judges—as no
[Pro]fits belong more to them than others.

February 1761

Conclude with Reflections on the Reason of
their Comm[issi]ons continuing— What Karm &
Judex est Lex Loquens Justum & tenacem [pro]positi &
& as the Law continues—So should Judges.
Whatever be the Event of this Debate—Whether &
May the Liberties of Penns[ylvani]a be immortal

AD (PHi-Logan)

¹ Members of the Assembly reported that there were accounts in the papers on Jan. 8, 1761. See *Votes* (1761), 14; see also *PG*, Jan. 22, 1761.

² 12 & 13 Will. 3, c. 2 (1701): “An Act for the Further Limitation of the Crown, and Better Securing the Rights and Liberties of the Subject.”

³ “A Supplement to the Act, Entitled ‘An Act for Establishing Courts of Judicature in this Province.’” See 5 *SALP* 462–65.

⁴ The appointees are named in a report of their 1761 removal: “The Governor being reminded that the ... next week the Court would be held at Lancaster for that County, he issued supersedeas under the great Seal to the persons who had exercised the Offices of Judges of the Common Pleas in that County ... to Emanuel Carpenter, Isaac Saunders, Calvin Cooper, John Hobson, and John Douglass.” See 8 *CRP* 562; see also *LLP*, 2:285, 288; 3:444, 446.

⁵ 6 *SALP* 696; 6 *SALP* 723–24.

⁶ 6 *SALP* 568.

⁷ 6 *SALP* 568; A writ of supersedeas suspends the enforcement of a judgment.

⁸ 6 *SALP* 568.

⁹ 6 *SALP* 569.

¹⁰ 6 *SALP* 566–70.

¹¹ 6 *SALP* 570–71.

¹² JD, “Letters from a Farmer in Pennsylvania, to the Inhabitants of the British Colonies. Letter IX,” *PG*, Jan. 28, 1768.

¹³ The following two-page fragments seem to be earlier notes on which the foregoing argument was based.

¹⁴ Patents or letters patent: “A document conferring some privilege, right, office, title, or property” (*OED*).

¹⁵ Edward I (1239–1307) was king of England from 1272 until his death.

¹⁶ Writ: “A written command, precept, or formal order issued by a court in the name of the sovereign, state, or other competent legal authority, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein” (*OED*).

¹⁷ 4 Coke, *Institutes* 74–75: “Before the reign of E. 1. the Chief Justice of this Court was created by Letters Patents.... For it is a rule in law, that ancient offices must be granted in such forms and in such manner, as they have used to be, unlesse the alteration were by Authority of Parliament.... The rest of the Judges of the Kings Bench have their offices by Letters Patents in these words, *Rex omnibus ad quos presentes literæ pervenerint, Salutem. Sciatis quod constituimus dilectum & fidelem Iohannem Doderidge militem unum Iusticiariorum ad Placita coram nobis tenenda durante beneplacito nostro, Teste, &c* [Lat. The king shall give greeting to all to whom the present letter shall come. Know that we establish the beloved and faithful knight John Doderidge one of the Justices of the Pleas before us, to be held during our pleasure, Teste, &c.]”

¹⁸ Commission: “Authority committed or entrusted to a person; *esp.* delegated authority to act in a particular capacity, carry out an investigation or negotiation, perform judicial functions, etc.” (*OED*).

¹⁹ Jenkins 123: “The Judges of the King’s Bench and Common Pleas and the Barons of the Exchequer are made by Patent, in which the Word *Constituimus* [Lat. we constitute or appoint] is used. The Chief Justice of the King’s Bench is constituted only by Writ.”

4 Coke, *Institutes* 75: “And where in 5 E. 4. it is holden by all the Justices in the Exchequer chamber that a man cannot be a Justice by Writ but by Patent or Commission, it is to be understood of all the Judges, saving the Chief Justice of this Court. But both the Chief Justice, and the rest of the Judges may be discharged by Writ under the Great Seal.”

²⁰ 4 Coke, *Institutes* 28: “It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seale, and signed with his hand, and declared and notified in his absence to the Lords Spirituall and Temporall and Commons assembled in the Higher House of Parliament, is, and ever was as good strength and force, as if the Kings person had been there personally present, and had assented openly and publickly to the same.”

²¹ JD quotes the relevant passage from 2 Coke, *Institutes* 175; see the text at n. 48, below.

JD probably meant to cite 4 Coke, *Institutes* 75 (see n. 19, above).

Moore 311: The relevant passage seems to be Moore 176–77 (see the text at n. 52, below).

3 Bacon, *Abridgment* 733: “The Judges of the several Courts at *Westminster* held formerly their Places *durante beneplacito* [Lat. during pleasure], but now by the 12 *W.* 3 their Commissions are *quamdiu se bene gesserint*, by which they hold their Offices for Life.” The entry titled, “Offices and Officers,” can be found at 718–45.

²² Lat. high justice into chief justice.

4 Coke, *Institutes* 74: “The Justices of this Court have no Commission, Letters Patents or other means to hold pleas, &c. but their power is original and ordinary. They were called anciently *Justiciae*, *Justiciarii*, *locum tenentes domini regis*, &c. [Lat. justices, justiciars, holding the place of the lord king]. The Chief Justice, *Justitia Angliæ*, *Justitia prima*, *Justiciarius Angliæ*, *Justiciarius Angliæ capitalis* [Lat. justice of England, first justice, justiciar of England, chief justiciar of England], and *Justiciarius noster capitalis ad placita coram nobis terminand* [Lat. our chief justiciar serving as long as it pleases our heart] To observe the change of these names, and the reason and change thereof, is worthy of observation.”

²³ Lat. interchangeable names.

²⁴ Lat. during good behavior. The complete phrase is: *dum se bene gesserit*.

²⁵ Jenkins 214: “CASE LIII. A Judge of the Common Pleas is made Judge of the King’s Bench, his Patent of the Judge of Common Pleas is void.... The Judges of the King’s Bench may reverse Judgments given before any of themselves at the Assises, or Gaol-Delivery, or *Oyer* and *Terminer*, or *Sessions* of the Peace; or before any other *Judges*: So of Judgments given in Chancery: For the Law supposes that the King himself sits in the King’s Bench. The Reason why such Patent as of Judge of the Common Pleas, shall be void, when the same Person is made Judge of the King’s Bench, is, not because the King’s Bench controuls the Judgments of the Common Pleas: But the true Reason is, that by the Common Law, one and *the same* Person is not presumed able to dispatch the Business of *those* two eminent Courts, which proceed according to the Law; and the Judgments of the King’s Bench are the King’s Judgments.”

JD quotes the relevant passage from 4 Coke, *Institutes* 117; see the text at nn. 75, 84, both below.

Harcourt v. Fox, 4 & 5 W. & M., B.R. (1692–93). JD is mistaken in his citation, which should be 1 Shower 426–40, 506–36, 556–58. Simon Harcourt sued John Fox for the fees he received as clerk of the peace, a position to which Harcourt had been appointed before Fox. The court ruled in Harcourt’s favor, arguing that he was entitled to the fees because he had behaved well while in office. As the attorney general explained, “When a Clerk of the Peace is nominated and appointed by the *Custos Rotulorum* [Lat. keeper of the rolls], &c. he is to hold his Office *quamdiu se bene gesserit*, that is, during Life, unless he forfeits it by Misdemeanour, and his Office is not determinable at the Will, or by the Death of displacing of the *Custos Rotulorum*” (556).

For 3 Bacon, *Abridgment* 733, see n. 21, above.

Shower, *Parliament* 158–64, *Fox v. Harcourt* (1692–93). Fox argued that the 1692 judgment should be reversed. The court disagreed and affirmed the judgment.

1 Shower 557: “Now all that is allowed to the *Custos Rotulorum* is the nominating the Person; The Interest or Estate he is to have in the *Office*, is limited and fixed by the *Act of Parliament*, viz. during his good Demeanour. When an *Office* is granted *quamdiu se bene gesserit*, it is a Free-hold, and to last during the Parties Life. It is so, even in the Case of the King, whose Grant shall be taken most strictly against himself. If the King grant an *Office quamdiu se bene gesserit*, it is a Freehold for Life.”

1 Coke, *Institutes* 42 a.: “If a man grant an estate to a woman *dum sola suit*, or *durante viduitate*, or *quam diu se bene gesserit*, or to a man and a woman during the coverture, or so long as he pay 10 l. &c. or until the Grantee be promoted to a Benefice, or for any like incertain time which time, as *Bracton* saith, is *tempus indeterminatum*: In all these cases, if it be of lands or tenements, the Lessee hath in Judgment of Law an estate for life.”

Carthew 426: *Sanders v. Owen*, Mich. 9 Will. 3, B.R. (1697). Heneage Finch, third earl of Winchelsea, serving as keeper of the rolls for Kent Co., England, nominated Philip Owen to serve as clerk of the peace. Upon Winchelsea’s death, Henry Sidney, first earl of Romney, was appointed keeper of the rolls. He nominated Saunders to serve as clerk of the peace, who entered the post and disseized Owen. Owen brought an action before the Court of Common Pleas, which ruled in his favor, but the justices of the King’s Bench “reversed the Judgment, because the Form of the Words used by the *Earl of Winchelsea* in the Nomination of *Owen* was insufficient, for he did not name any *certain County* of which he should be *Clerk of the Peace*.”

²⁶ Lat. made known. “A judicial writ requiring a defendant to appear in court and prove why an existing judgment should not be executed against him or her” (*BLD*).

²⁷ Previously written on the page under this and the next line was “The King v Kemp,” a handbrace, and “Shower.” *Rex & Regina v. Kemp*, Pasch. 6 W. & M., B.R. (1694), concerned a “*Scire fac* [Lat. “A writ directing a sheriff to require a person to show cause why a record should not be annulled or why another person should not have advantage of it” (*OED*)] out of the Petty-bagg [an office of the common-law jurisdiction of the Court of Chancery], to repeal Letters Patents; &c. setting forth, That king *Charles* the Second did on the 25th of *Julii*, Anno 12 of his Reign grant to *Martin* the Office of Searcher in the Port of *Plimouth*, *quam diu Domino Regi placuerit*.” See 4 *Modern* 275. It is unclear to what JD is referring in Shower. The *Kemp* case does not appear there, but there are multiple cases that deal with *scire facias*.

²⁸ 4 Coke, *Institutes* 164: “[C]ertain Justices having their authority by Writ, where they ought to have had it by Commission, though it were of the form and words that the legal Commission ought to be, *John Knivett* Chief Justice by the advice of all the Judges resolved, that the said writ was *contra legem* [Lat. against the law].”

Fitzherbert, *Natura* 110: “Nor shall a Parson have a Writ of Right *Sur disclaimer* [Lat. upon disclaimer], nor a Writ of Customs and Services, nor an *Injuste vexes* [a prohibitory writ restricting landlords from demanding more than their legal due from tenants], nor such Writs as are grounded upon the mere Right. But it seemeth he may have *Contra formam Collationis* [a writ to recover donations], or *Feoffamenti* [Lat. feoffment], and a Writ of *Mesne* [‘A writ by which a tenant could recover damages from a mesne lord’ (*OED*)], and *Ad Terminum qui praeteriit*, &c. [Lat. at the end of a term that has expired] and such possessory Writs which are grounded upon the mere Right.”

²⁹ Lat. the judge is the law spoken.

³⁰ It appears that JD is referring to Dyer 197 b. – 198 b., which contains reports of five cases all labelled “*Scire fac*’.”

³¹ Dyer 197 b.: “In Hillarij 15 H. 8 il appiert que Robert Blage suit le Remembrancer le Roy in Leschequer per Patent, *pro termino vite* ... & in anno 3. H. 8. le dyt R. Blage suit fait le tierce Baron de Leschequer, & son Patent de ceo suit forsque *quamdiu se bene gesserit in eodem officio Baron* [LFr. In Hilary 15 H. 8. it appeared that Robert Blage was the remembrancer of the king in the exchequer by patent for the term of his life ... and in the 3d year of H. 8. the said R. Blage was made the third baron of the exchequer, and his patent of this was only *quamdiu se bene gesserit in eodem officio Baron*].”

Raymond, *Special* 217, “Justice Archer’s Case,” Hill. 24 & 25 Car. 2., B.R. (1671), addressed the fact that Archer was removed from his seat on the Court of Common Pleas. Archer’s patent was *quamdiu se bene gesserit* and so he “refused to surrender his Patent without a *Scire facias*, and continued Justice of that Court, though prohibited to sit there, and in his Place Sir *William Ellis* Knight, was sworn.”

1 Shower 510, *Harcourt v. Fox* (1693): “Now, My Lord, This I take plainly to be an Estate for Life; for if any judicial or ministerial Office be granted to any Man to hold, so long as he behaves himself well in the Office, that is an Estate for Life, unless he lose it for Misbehaviour. So was Sir *John Waller*’s Case, as to the Office of Chief Baron of the *Exchequer*; and so was Justice *Archer*’s Case in the time of King *Charles* the II.”

Siderfin 2: “Note that it was this Paschal Term the King made these Justices, that is to say, Sir *Edward Hide*, Lord Chancellor of England; Sir *Orlando Bridgman*, Lord Chief Baron of the *Exchequer*; Sir *Robert Foster* and Sir *Robert Hide*, Justices of the Common Bench; Sir *Tho[mas] Mallet*, Justice to the *Royal Bench*; and Lord *Culpeper*, Master of the Rolls. And the type of authority of any of these Justices was to be held just as if it were pronounced from the authority of Justice *Hide*.”

3 Bacon, *Abridgment* 743: “Where-ever an Officer who holds his Office by Patent commits a Forfeiture, he cannot regularly be turned out without a *Scire facias*, nor can he be said to be completely ousted or discharged without a Writ of Discharge; for his Right appearing of Record, the same must be defeated by Matter of as high a Nature.”

³² The document title was found on the verso of this leaf. See also n. 54, below.

³³ 1 Coke, *Institutes* 3 a.: “And the Court said, that it may be that a woman was baptized by the name of *Anable*, and 40 years after she was confirmed by the name *Douce*, and then her name was changed, and after she was to be named *Douce*, and all purchases, &c. made by her by the name of baptism before her confirmation remain good.... But Purchases are good in many cases by a known name, or by a certain description of the person, without either surname, or name of baptism.”

1 Shower 517, *Harcourt v. Fox* (1693): “And upon this special Verdict I am of opinion Judgment ought to be given for the *Plaintiff*; I shall not ground my self in giving this Judgment upon that which was much insisted upon at the Bar, that it was

plain within this special Verdict, that however it happened as to the *Plaintiff*, the *Defendant* could have no Title to this *Office*, because his Appointment does not pursue the Words of that last *Act*, it being only for so long time as the Earl of *Bedford* remained *Custos*; for I take it, the *Plaintiff* must recover by the Strength of his own Title, and not by the Weakness of the *Defendant's* Title; but withal I am of opinion that notwithstanding that Limitation in the *Defendant's* Grant, if the *Plaintiff* was not still Clerk of the Peace, the *Defendant* would be Clerk of the Peace within this Act of Parliament; for I take it, the *Custos Rotulorum* has only the Power to nominate, and when once the Clerk is in his Estate in the Office, he is Settled by the *Statute*, and not by the *Limitation* in the Grant.”

³⁴ Jenkins 209: “Judge, Bishop, Baronet, Knight, are all Names of Dignity; Writs brought for them or against them ought to name them so.”

³⁵ The first frame of government for Pennsylvania (May 5, 1682) provided in sec. 17: “I, William Penn, do therefore think fit to nominate and appoint such persons for Judges, Treasurers, Masters of the Rolls, Sheriffs, Justices of the Peace, and Coroners, as are most fitly qualified for those employments; to whom I shall make and grant commissions for the said offices, respectively, to hold to them, to whom the same shall be granted, for so long time as every such person shall well behave himself in the office, or place, to him respectively granted, and no longer.” The second frame of government (Feb. 2, 1683) provided in sec. 16 that “Judges, Treasurers, and Masters of the Rolls” could serve “so long as they shall well behave themselves.” The Charter of Privileges (Oct. 28, 1701) allowed sheriffs and coroners to serve “so long they behave themselves well,” and for clerks of the peace to “serve in the said Office during good Behavior.” See *Collection of Charters*, 16, 32, 44.

³⁶ Jenkins 308: “At this Day all Sheriffs, Judges, Justices of the Peace, Escheators and other Officers are determined by the King’s Demise; except those which belong to Corporations.”

JD quotes the relevant passage from 2 Coke, *Institutes* 175; see the text at n. 48, below.

JD is probably referring to 7 Coke, *Reports* 30 b: “By the demise of the K. all Offices of Sheriffs are determin’d; and therefore till new Patents of their offices nothing can be done.... [F]or altho’ it is true, that the K. *in genere* [Lat. generally] doth not die (for there is no *interregnum*) yet *in hoc individuo* [Lat. in this particular], *H. the K and Ed. the K. &c. dies.*”

³⁷ 9 Coke, *Reports* 97, “Sir George Reynel’s Case,” Hill. 9 Jac. 1 (1612). The case concerned the office of marshal of the King’s Bench, first granted to Edward Peacock “for the Term of his Life,” then to James Elphinstone, first lord Balmerino (1557–1612), and “his Assigns, for 31 Years in Reversion,” who assigned it to Henry Spiller, who then assigned it to Reynel. As Coke writes, “[a]nd it was found by Office by force of a Commission under the Great Seal, and returned in the Chancery, that Sir *G. Reynel* had committed divers Forfeitures of the said Office by suffering voluntary Escapes of Prisoners, &c. And the only Quest. which was argued at the Bar in the Chancery by the said Order of the Court was, If upon this Office the K. might seise without a *Sci. fa.* [a writ requiring that it be shown why a judgment regarding a patent or record should not be enforced or annulled] (for no Quest. was made upon the Validity of the Office;) But after the Argument I moved, If such Office might be granted for Years, or not. And then the Lord Chancellor conceived it could not” (95 b.). The grant for years was declared void, “[b]ecause this Office is an Office of great Trust annexed to the Person, and concerns the Administration of Justice, and the Life of the Law, which is to keep those who are in Execution *in salva & arcta Custodia* [Lat. In strict and safe custody], to the End they may sooner pay their Debts, &c. and this Trust is individual and personal, and shall not extend to his Executors or Administrators” (96 b. – 97 a.).

1 Coke, *Institutes* 3 b: “No man though never so skillful and expert is capable of a judicial Office in reversion, but must expect until it fall in possession.”

It is likely that JD is referring to 1 Shower 527–36, which contains Holt’s opinion in *Harcourt v. Fox* (1693).

³⁸ Sir Joseph Jekyll (c. 1662–1738) was a lawyer, Whig member of Parliament, and judge. He was appointed to the bench as chief justice of Chester in June 1697. He was created serjeant-at-law in 1700, served as a queen’s serjeant from 1702 to 1714, and was made prime serjeant in 1714. Jekyll resigned his position of chief justice in 1717 to become master of the rolls.

³⁹ Lat. a man upright and firm of purpose. The complete line is: “*justum et tenaceum propositi virum, non civium ardor prava jubentium, non vultus instantis tyrannia mente quatit solida*”; not the rage of the citizens commanding wrongful measures, not the aspect of the threatening tyrant, can shake from his firm purpose the person who is just and resolute. Hor. *Carm.* 3.3.

⁴⁰ 13 Geo. 2, c. 7 (1740): “An Act for Naturalizing Such Foreign Protestants, and Others Therein Mentioned, as Are Settled, or Shall Settle, in Any of His Majesty’s Colonies in America.”

JD possibly means 15 Geo. 2, c. 2 (1741), a private “Act for Naturalizing John Christoph Gohl, Hans Bardewieck, and Others,” or 20 Geo. 2, c. 44 (1746), “An Act to Extend the Provisions of an Act Made in the Thirteenth Year of His Present Majesty’s Reign, Intituled, An Act for Naturalizing Such Foreign Protestants, and Others Therein Mentioned.”

⁴¹ Gordian knot: “An intricate knot tied by Gordius, king of Gordium in Phrygia. The oracle declared that whoever should loosen it should rule Asia, and Alexander the Great overcame the difficulty by cutting through the knot with his sword” (*OED*).

⁴² The Glorious Revolution, 1688–89.

⁴³ It is unclear to what JD is referring.

⁴⁴ Freehold: “Permanent and absolute tenure of land or property with freedom to dispose of it at will. Also: a corresponding tenure of a dignity or office” (*OED*).

⁴⁵ JD quotes the relevant passage from 2 Coke, *Institutes* 175; see the text at n. 48, below.

4 Coke, *Institutes* 100: “The Chief Justice of the Common Pleas is created by Letters Patents.... And each of the Justices of this Court hath Letters Patents ... [and] none of them can take any other office, or any fee, or reward, but of the King only.”

JD quotes the relevant passage from Moore; see the text at n. 52, below.

⁴⁶ Verderor: “A judicial officer of the King’s forest ... sworn to maintain and keep the assises of the forest, and also to view, receive, and enroll the attachments and presentments of all manner of trespasses of the forest, of vert and venison’ (Manwood)” (*OED*).

⁴⁷ Lat. the custody of the county.

⁴⁸ Here, JD is quoting from 2 Coke, *Institutes* 175.

⁴⁹ Sir Thomas Walmsley (Walmesley; 1537–1612) was appointed to the Court of Common Pleas in 1589, where he served until his death.

⁵⁰ Sir Edmund Anderson (c. 1530–1605) was appointed chief justice of the Court of Common Pleas in 1582.

⁵¹ Possibly Thomas Mead (d. 1585), a judge on the Court of Common Pleas between 1577 and his death.

⁵² The relevant passage seems to be at Moore 176–77, not 311. The case citation comes from Moore, but it appears to be incomplete with no term indicated. It is possible JD meant Mich. 10 Hen. 7. 7 a. – 8 a., which references “so long as the king pleases.”

⁵³ For 3 Bacon, *Abridgment* 733, see n. 21, above. JD discusses Raymond in the text at n. 81, below.

⁵⁴ Sir Robert Blagge (d. 1522), a lawyer who studied at the Inner Temple. On Jan. 26, 1503, he was appointed to the office of King's Remembrancer of the Exchequer and raised to the exchequer bench as third baron in 1511. Henry VIII (1491–1547) ruled England from 1509 until his death.

Dyer 197 b: "In Hilary 15 H. 8. it appeared that Robert Blage was the remembrancer of the king in the exchequer by patent for the term of his life ... and in the 3d year of H. 8. the said R. Blage was made the third baron of the exchequer, and his patent of this was only *quamdiu se bene gesserit in eodem officio Baron.*"

Probably Sir John Walter (c. 1565–1630), baron of the exchequer.

Sir John Archer (1598–1682) was knighted and raised to the bench of the Court of Common Pleas on Nov. 4, 1663.

For 1 Shower 510, see n. 31, above.

Sir Robert Foster (1598–1663) was knighted and raised to the bench of the Court of Common Pleas in 1640, and then restored to the court on May 31, 1660.

Sir Robert Hyde (1595/6–1665) was knighted and raised to the bench of the Court of Common Pleas in 1660.

Commonly rendered "C.B.," *Communis Bancus*, or common bench.

Sir Thomas Malet (c. 1582–1665) was knighted and appointed to the King's Bench in 1641, then reappointed in 1660.

For Siderfin, see n. 31, above.

⁵⁵ 1 Shower 428: "Not only my Lords the Judges of the Courts in *Westminster Hall* were anciently, as they are now, since this Revolution, *quam diu se bene gesserint*, but all the Officers of Note in the several Courts under them were so, and most of them continue so to this day, as the Clerks of the Crown in this Court, and in the Chancery, the chief Clerk in the Civil Side on this Court, the Prothonotaries in the Common Pleas, the Master of the Office of Pleas in the Exchequer, and many others."

⁵⁶ Here, JD is possibly referring to the second page of the unnumbered preface in 2 Coke, *Institutes*. See also n. 48, above.

⁵⁷ 12 & 13 Will. 3, c. 2 (1701): "An Act for the Further Limitation of the Crown and Better Securing the Rights and Liberties of the Subject."

⁵⁸ Lat. for so long as she remains single.

⁵⁹ Lat. during widowhood.

⁶⁰ For a definition of coverture, see doc. 2:3, n. 9, above.

⁶¹ Benefice: "Beneficial property or action (as of natural agents or causes)" (*OED*).

⁶² Henry of Bratton (Bracton; d. 1268), assumed to be author of a treatise, *De Legibus et Consuetudinibus Angliæ*, known as "*Bracton*."

⁶³ Lat. unspecified time.

⁶⁴ Livery: "A due or tribute" (*OED*).

⁶⁵ Advowson: "The right to present a member of the clergy to a particular benefice or living. Also occasionally more generally: guardianship, protection, or patronage of a church or religious house" (*OED*).

⁶⁶ Lat. an unnecessary statement or unproven assertion.

⁶⁷ 4 *Modern* 167–74. For Shower, see n. 25, above. Carthew does not discuss this case.

⁶⁸ Sir Giles Eyre (c. 1635–1695), Sir William Gregory (1625–1696), Sir William Dolben (c. 1637–1694), and Sir John Holt were all appointed to the King's Bench in 1689.

⁶⁹ "Et nota, ex isto placito que rent que seroit paye a auter volunt, fuit dit frankt asses bien, Sicut Dominus Rex concessit alicui aliquam balliam vel huiusmodi, donec bene et fideliter se gesser' in offic' ill' ut patet M. xi. in ass. de novel disaisen &c. Hil. 3 Edw. 3. Assise 172 [Lat. and LFr. And note, from this plea that rent that would be paid at the will of another was said to be freehold well enough. As the king granted to someone a certain bailiwick or something of like kind, as long as he conducted himself well

and faithfully in that office as appears Mich. 11 in an Assize of Novel disseisin etc. Hil. 3 Edw. 3. Assise 172].” See Robert Brooke, *Le Livre des assises et Pleas del’ Corone, Moves & Dependants devant les justices Sibien en lour Circuits come aylours, en temps du Roy Edward le Tiers, avec une Table Des principal’s matter’s des Pleas del’ Corone* (London: G. Sawbridge, W. Rawlins, and S. Roycroft, 1679), 5.

For Shower, see n. 25, above.

⁷⁰ For 1 Coke, *Institutes* 3 b., and 9 Coke, *Reports* 97, see n. 37, above.

⁷¹ Sir Thomas Powys (1649–1719) was counsel for the plaintiff in *Harcourt v. Fox* (1692). He was knighted and appointed solicitor general in 1686. A year later, he was appointed attorney general to James II. Powys argued that, “by the Common Law, and the ancient Constitution of the Kingdom, all Officers of Courts of Justice, and immediately relating to the Execution of Justice, were in for their Lives, only removable for Misbehaviour in their Offices.” See also 1 Shower 428.

⁷² The keeper or master of the rolls and records of the Chancery was the deputy of the lord chancellor. This is probably a reference to Sir Joseph Jekyll (see n. 38, above).

⁷³ 1 Shower 523, *Harcourt v. Fox* (1693).

⁷⁴ 1 Shower 535, *Harcourt v. Fox* (1693).

⁷⁵ 4 Coke, *Institutes* 117. See also the text at n. 84, below.

⁷⁶ 7 Coke, *Reports* 30 a.: “And for the remedy therefore was the Stat. of *Ed. 6. c.7.* made, which provides, that by the demise of the K[ing] in any action, suit, bill, or plaint, *that shall depend between party and party, in any of the K.’s Courts, and other Courts of record, shall not any wise be discontinued, or put without day, but that the process, pleas, demurrers, and continuances shall stand good and effectual, and be prosecuted and sued forth in such manner and form, and in the same estate, condition, and order, as if the same K. had lived.*”

⁷⁷ For 4 Coke, *Institutes* 28, see n. 20, above.

⁷⁸ For 4 Coke, *Institutes* 74, see n. 22, above.

⁷⁹ Jenkins 123: “The Judges of the King’s Bench and Common Pleas and the Barons of the Exchequer are made by Patent, in which the Word Constitutum [Lat. we constitute or appoint] is used. The Chief Justice of the King’s Bench is constituted only by Writ.”

⁸⁰ For 4 Coke, *Institutes* 164, see n. 28, above.

⁸¹ 2 Raymond, *Cases* 769: “Memorandum, That in this Trinity term the Queen gave directions for renewal of the judges patents, and for supply of the vacancies, and accordingly they all received new patents, excepting Holt chief justice de B. R. who had received his writ as aforesaid.”

⁸² Sir Joseph Jekyll was master of rolls from 1717 to 1738. See also nn. 38, 72, both above.

⁸³ Sir John Trevor (c. 1637–1717), a partisan of James II, became master of the rolls first on Oct. 12, 1685, but was deprived of the position in 1689. He regained it on Jan. 13, 1693.

⁸⁴ 4 Coke, *Institutes* 117. JD also quotes the line immediately preceding this quotation above. See the text at n. 75, above.

⁸⁵ For 4 Coke, *Institutes* 75, see n. 19, and for Jenkins 214, see n. 25, both above.

⁸⁶ 6 Ann., c. 41 (1707): “An Act for the Security of Her Majesties Person and Government and of the Succession to the Crown of Great Britain in the Protestant Line.”

⁸⁷ 1 Shower 531, *Harcourt v. Fox* (1693): “The Words themselves in their natural and proper Extent, do signifie an Estate for Life, the Clerk [of the Peace] behaving himself well.” See also n. 25, above.

⁸⁸ For 1 Coke, *Institutes* 3 a., see n. 33, above.

⁸⁹ For Jenkins 209, see n. 34, above.

⁹⁰ For 4 Coke, *Institutes* 74, see n. 22, above.

⁹¹ See n. 18, above.

⁹² For Jenkins 308, see n. 36, above.

⁹³ Magna Carta (1225), c. 29: “No free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land. To none will we sell, to none will we deny, to none will we delay right or justice.”

⁹⁴ For Dyer 197 b. and Raymond, *Special* 217, see n. 31, above.

4 Coke, *Institutes* 72: “A *scire fac*’ to repeal a Patent of the King may be brought in this Court [the King’s Bench].”

31

Draft Speech of a Debate on the Validity of American Court Proceedings upon the Death of George II, [c. February–August 1761]

With the passing of one monarch and the ascension of another, the colonies experienced procedural difficulties in their legislatures and courts. Leaders of the Pennsylvania Assembly, for example, found that “they are under some Difficulty in regard to the Manner of qualifying the [new] Members,” namely, what they must speak in the oath of allegiance. They also worried about the laws that were passed.¹ As speaker of the Assembly of the Three Lower Counties, JD contended with these matters, as well. In 1773, leading figures in Maryland asked JD to give his opinion on the validity of a law passed in that colony shortly after the death of William III. He found that it was valid on the grounds of “Reason & constitutional policy.”²

As this document suggests, it seems Pennsylvania jurists also deliberated about a matter of concern to their counterparts in New Jersey, namely, the effect the king’s death would have on court proceedings. That legislature passed “An Act for Obviating Doubts Respecting the Acts of Assembly Passed Last Session; and For Confirming the Proceedings of the Courts of Justice in this Province, Since the Demise of his Late Majesty,” which held that the courts would continue as usual without any dissolution or discontinuation, and should the king’s successor invalidate a particular law enacted in the interim, no other law than the one specified would be invalid.³

The following draft, apparently based in part on the preceding set of notes (doc. 2:30, above), seems to have been prepared for a debate that was strictly academic, premised as it was on a counterfactual, namely that the king had been dead for six months before the colonists learned of his passing. In reality, as noted above, colonists learned of

George II's demise just over two months after the fact. The question for the evening of debate, then, seems to have been whether court proceedings that took place six months after the king's death and before they received notice would be valid. Despite the timing not being an actual issue, as the preceding document demonstrates, the matter of judges' commissions was a real dispute in Pennsylvania on which they were awaiting word from Attorney General Pratt. This same question was at the heart of the debate for which JD prepared this document.

JD's assigned task was to argue that the court proceedings were not valid, in part because the judges' commissions terminated with the demise of the king. It was the opposite position he took in the real dispute over the Pennsylvania judges in doc. 2:30, above. His answer here to the question flowed from the nature of government under the English constitution, namely, that the legislature made the laws and the executive enforced them. It was a salutary matter that the executive authority was fixed in one person, who delegated that power to judges who acted on his behalf. Consequently, judicial officers deriving authority from the king ceased to possess that authority upon his death. For the authority to continue until notice of the king's death was received would be inconsistent with that practice, and hence, the court proceedings would be invalid.

Pratt's determination, in line with JD's arguments in doc. 2:30, above, that the Pennsylvania judges were not the king's but the Assembly's judges rendered the debate moot. The debate for which JD wrote this document took place likely before August 1761, the earliest time the colonists could have received news of Pratt's decision.

The question proposd to your Consideration tonight is Whether Proceedings in his Majesty's Courts in America, {Six months} after his Demise, & before Notice had of it, are Valid? ~~After Six Months?~~ And it falls upon Me to maintain the Negative: And in doing this I shall first Consider the ~~Office of A King as it relates to this Point~~ {& the Law in general upon it}—then I shall Endeavour to shew What the ~~Common Law~~ [*illegible*], {2^y} [h{H}]ow altered by the Statutes of E[*illegible*] Q[ueen] Anne {far it will be affected by Notice} & lastly obviate some Objections, that may be made to this Doctrine

{} **But before &c**

The Authority of Gov[ernmen]t G[entlemen] is Twofold— Legislative & Executive— The One is a Power to make Laws—the other to Enforce them—for as ~~the design of all Institutions is to promote Regularity & Peace, [for these secure?] to everyone their Rights~~ {can never

exist, nor our Rights be safe w[ith]out some Institutions to promote those & secure these} So The Wisest Regulations & most prudent Plans avail nothing without a vigorous Execution— To answer these necessary & beneficial Ends— Innumerable Schemes have been formd in all Ages, & in all Countries— And the Peace {of Nations} has been long aimd at in fruitless Attempts—of [M]onarchies, Aristocrasies & Democ[racies] Power has been moulded into various forms; It has been lodgd in One, in many, in All; It has receivd infinite Changes, but also had the same Effect, & Confusion & Slavery succeed the vain Labour But Our happier Countrymen, Wise by the Misfortunes of others, seem to have given it the Right Stamp—& to have restraind it in [pro]per bounds {& Divisions}

By the English Constitution, the Legislative Authority is vested in those who are to be gov[erne]d by the Laws: {The People:} But as this is annexd to them for a [par][ticu]lar purpose, when that is answered— it is determind— **But** the Executive Author[ity] being calculated for enforcing those Laws, it is absolutely necess[ary] it should continue as long as the Laws themselves {which are to be enforced}— And therefore it was thought Prudent to settle {it} in some Supreme Majestate, & to prevent Disputes, to establish some certain Success And to give Greater Dignity to his Power {& Render his [per]son more respectable}, Many {great} Priviledges were added to him. He was appointed the Fountain [*illegible*] {of} Honour—The Maker of War or Peace, & A Liberty of doing great Good but no harm [*page break*]

And Nothing could be wiser than fixing it in one [per]son—for as his Office was always to remain in force, One would not only be less burthensome & Expensive to the People—but there would be less Doubt in resolving & Determining, Greater Readiness in Obeying, & ~~the gr~~ {less Danger of Contention} Business more quickly dispatchd— And in deriving his Authority from this Source, the Grand Objection to Arbitrary Gov[ernmen]t is removd—for as It was delegated to him for the Execution of the Laws, It gives him no Power to Act otherwise than those Laws direct **nihil aliud Rex potest, quam quod Jure potest**⁴ {9 Rep. 123.}⁵

The King then, G[entlemen] being appointed Head of the Gov[ernmen]t to secure Peace & Order— To preserve the Dignity of So exalted a Station & thro[ugh] the Extent of his Duty, A Number of Officers was found necessary, & he was oblidgd—to Commission Deputies to every part, & this avoided the Inconveniences & Dangers arising from many of an Equal Authority—at the same time that it provided for the

Demands of Society; & Enforced a speedy Redress by the Superintendance of Such a Powerful Inspector of their Conduct. Thus G[entlemen] We have traced the Judicial Authority up to its Source—& what is insisted on, of the other Side, That the Stream still flows, tho[ugh] the fountain be dry: That a man's [power] Survives, tho[ugh] his [per]son be dead—& that the Authority of the Pred[ecess]or is incompatible with that of his Successor.

But G[entlemen] I humbly apprehend—that as Offices are deriv'd out of the Kings, & when his determines, all the Rest of Course must cease—& further that on the Demise of one King, all the Royal Author[ity] immediately vests in his Successor: And in this Opinion I cant but think myself supported by the Laws of the Realm. And so firmly G[entlemen] shall We find the Regal Dignity connected with the Throne, That even the Authority of Kings de facto & not de Jure[is] have been allowed as Legal— Attainders by them have always been in force till rev[oke]d & Statutes of Kings de Jure have been repealed by Statutes of Kings de facto—& still remain so— Thus the [page break] Statute of 21 R. 2.⁶ is repealed by 1 H. 4. c. 3.⁷ And We know it is a Maxim of Law “that no Auth[ority] less than what made a Law can repeal {it}”⁸ Nay **magna Charta** itself in 9 H. 3⁹ was granted by a K[ing] de facto— Arthur of Bullo[gn]e his Father's Elder brothers Son being then alive— And Acts of Parl[iamen]t by R[ichard] 3 Attainting those [Per]sons who sided with the Earl of R[ichmond]¹⁰ disabled the [Per]sons from setting in Parl[iamen]t till rev[oke]d by 2 H. 7.¹¹ And Lastly my L[or]d Coke & Hale in their Const[ructio]n of the Words our Sov[ereign] **Lord the King** {in 25. E. 3}, say it is to be understood only of the King in Possession of the Crown, tho[ugh] he be but **A King de facto**.¹²

If then G[entlemen] all the Dignity, Power, & Regard of a King center in him, who is in possession of the Crown, tho[ugh] unjustly, how much more so, where he comes in rightfully: And I take it that one King cannot abridge the Authority of Ano[the]r— Justice & Mercy says Jenkins in his Cent[uries] 307 are inseparably annex'd to the Crown & cant be transferred & p. 171 He says the King cant grant to any to make Just[ice] of Oyer & Terminer—for it is an high Prerogative¹³—& 4 Ins. 42.¹⁴ It is held that the last Will & Testament of [K][ing] R[ichard] 2. under the great Seal, Privy Seal, & privy Signet, whereby he devised certain Money, Treasures &c to his Successors upon Cond[itio]n to observe all the Acts and Orders at the Parl[iamen]t holden in Anno 21 of his Reign,¹⁵ was unjust & unlawful, for that it restrain'd the Sovereign Liberty of the King his Successors.¹⁶

But G[entlemen] more fully to the Point is Brookes Ab[ridgement] tit. Prærogative 91.¹⁷ Commissions for the Adm[inistratio]n of Justice shall be confirmd by the Successor— And such as want to be confirmd, certainly cease by the Death of the Pred[ecess]or. But this put out of all doubt by C.R. 31. Moore 176— 2 Keb. 355. 1 And. 44¹⁸ Where it is not only said that all Commissions of the Justices of the one bench & the other, of Oyer & T[erminer]¹⁹ of the Peace &c determine by the demise of the K[ing], but that at Common Law—the Plea was discontinued, & all the Process w[hic]h was awarded & not returnd before the K[ing]’s death, was lost[:] Wherefore it was provided by 1 E. 6. c. 7—²⁰ That by the demise of the K[ing] [page break] any bill, acc[ess]ion, &c {that shall depend} between [par]ty & [par]ty—in any of the K[ing]’s Courts or Courts of Record, shall not anywise be discontinued, or put without day—but that the Process—Pleas Dem[ur]rers & Continuances shall stand good & Effectual, & be prosecuted & sued forth in such manner & form, & in the same Estate Cond[itio]n & order, as if the same K[ing] had livd. So that[,] You perceive G[entlemen] the only Inconvenience this Statute remedied, was the Discontinuance of Process— [illegible]{So} that by it they were confirmd in the State they were at the K[ing]’s demise, but ano[the]r still remaind—that there wer[er] {as} no Judges to proceed on it thus continued till new ones were appointed— B[illegible] But however this was at last provided for by the 6 Annæ c. 7²¹ Which continues the Comm[ission]s of Judges for Six Months. { } But G[entlemen] what I have said, has not been aimd at this mark alone, to prove that Judges Comm[issions] determine by the Kings demise—that could not be disputed—but to shew from the Nature of the thing—that by the K[ing]’s demise—all the Royal Auth[ority] must be vested in his Succ[ess]or & in him alone: That it is linkd to the Throne & inseparable from it[:] That [it is derogatory] [illegible]{to} his Dignity to suppose it Possible—

But now G[entlemen] I shall Consider the 2.^d Point & how far it can be affected by Notice— And first G[entlemen] I Lay it down as a Maxim—that Notice is not necessary in things of a Publick Nature— 2 Show—317—²² Every free man of a Corp[oratio]n²³ is supposd to be virtually present at all [acts] of the Corp[oratio]n & theref[ore] no Notice necessary to bind him. 1 Salk. 142. Carth 480. 12 Mod. 272. 5 Mod. 442²⁴

If then it be a thing of a Publick Nature—what Sovereign rules Us, or under what Dom[ini]o]n We Live—& if We are all to be lookd

on as Subjects of the same Kingdom, then I presume We are affected by his Demise.

But if Comm[ission] granted by {a} former K[ing] continue after Notice, then they do not determine by—Death—if they cease on Notice—then the Notice destroys them—

But surely G[entlemen] if We consider the Reason of their Determining We shall find it equally strong, where there is ~~Reason~~ Notice, & where there is not— Is not the Regal Authority as much devolv'd upon the S[ucces]sor by the demise of the King before Notice as after? And is it not as much devest'd out of the Pred[eces]sor? The Result of these Concessions is—That the Right descending upon {the} one— Extinguishes all Claim of Another. [*page break*]

Now G[entlemen] as We have seen by Jenkins 171—317,²⁵ & Brooke's Ab[ridgemen]t 91—²⁶ That the King cannot devest the Crown of the Right of appoint[ing] Officers of Justice— Is it not an Abridgm[en]t of it—that his should continue after the Right of Ap[point]ment is vested in ano[the]r? And if all Executive Power is lodg'd in the Succ[ess]or—then it can be adm[inistere]d only by him & his Deputies—So that the Notice becomes unnec[essary] & the Question must be reduc'd to this—Whether theirs is deriv'd him? For his Authority is equally vested in him at the time of the other's demise—& at the time of Notice, & having once [accru'd?] & become perfect, it wants no further ~~Consequence~~ {Circumstance} to confirm it, & depends not on the fickleness of the Elements to make & unmake a King—

But pray—what is the Effect of this Notice, to give a Right? No! He has that already: But only to acquaint Us—that he has it. So that this Arg[umen]t destroys itself—for tho[ugh] they deny any Effect from [it?] Yet they confess there is a Right—& if it exists—it must exist without an Operation— But on the other hand—they supp[ose] the Operation of a Right—tho[ugh] none exists—for tho[ugh] K[ing]'s Authority is determin'd—yet his Deputies Remain—As if the feet could walk tho[ugh] the Head were cutt off— But this Adm[inistratio]n of I take to be like a Mill with the chief Wheel broken—that may continue its giddy Motion—a long time after—but at last the Workman observes his Labour has been vain.

It is a Maxim of Our Law that Want of Right & want of Remedy is the same thing—²⁷ And I cannot but think it equally inconsistent with the Wisdom of the Laws—to suppose A Right w[ith]out Effect, or Effect w[ith]out a Right: W[hic]h must be the Inevitable Consequence of laying so great Weight on the Notice— But I recollect a Case G[entlemen]—tho[ugh] not near so strong as Ours—yet as it stands on

the same Reason—it may contribute to Our Inform[atio]n {to confirm the Doctrine I have advanced} & shew how little Regard is had to Notice in like Cases— And that is G[entlemen] Where a man makes a Letter of Att[orne]y to sell Lands—& dies before any Sale made— The Att[orne]y after his Death & before Notice thereof— Sells the Land—the Sale is void—& for what Reason G[entlemen] Because instantly on the death of the Ancestor, the Estate vested in the {Heir} [page break]

Now G[entlemen] if You are satisfied—the Right of Appoint[ing] Officers of Justice is annexd inseparably to the Crown—I shall make but a very modest Request—And that is—that You will pay an Equal Regard to the Prærogative of a King as to the Property of a private man. It would be needless in Me G[entlemen] to quote Cases to shew the great Diff[erence] the Law makes between them; for as You must be acquaint[ed] with them, So I doubt not, they will have a proper Weight with You.

But suppose—in the [pre]sent Case—~~they [never had]~~ {All their Acts to} be void—till Notice—then the Demise is immaterial—but if the Demise on the other hand makes the material Alter[at]io[n] any Notice afterw[ar]ds cannot Justify actions in themselves void **Quod ab initio non valuit—tractu temporis convalescere &c**²⁸

However inclind a [Per]son may be to the contrary Opinion, they cannot believe the King himself can Adm[inist]er Justice after his dem[ise]

How then he can Empower ano[the]r to do what he cannot himself I cannot conceive— He cannot transferr to ano[the]r A Right he has not himself **Nemo potest dare, quod non habet.**²⁹ Or if he could—his ~~Dep[uty]~~ would be {delegated} Power would be more extensive than his own—his Deputy greater than himself—& the {King} no longer Supreme Majestrate—w[hi]ch destroys the Superstructure I have been Raising on this found[atio]n sweeps away all Distinction, & ~~whether~~ Introductive of the greatest Disorder.

I come now G[entlemen] to those Objections w[hi]ch may be made to this Doctrine—& I think the most Cons[idera]ble are these 3—The Auth[ority] of Sir R[andolph] Crew's Case—³⁰ The Inconvenience that would ensue to Society from the want of a [pro]per Auth[ority] to execute the Laws—& lastly—the seeming Contrad[ictio]n to that Maxim of the Law—Rex nunquam moritur—³¹

As to the first Obj[ectio]n The Auth[ority] of Sir R[andolph] Crew's Case— It was [~~illegible~~]{Upon} a Comm[ission] to examine Witnesses— The Comm[ission] began their Exam[inatio]n {Mond[ay]} 28 March 162[~~illegible~~]{5}—w[hi]ch was the day after the

Demise of King James & continu'd their Examination till Friday following—at w[hic]h day & not before having Notice of the Demise of the King they surreas'd & return'd [page break] All that they had done— And the question was—Whether the Depositions taken after the King's Demise & before Notice—should stand And it was determin'd they should—for it was Said that altho[ugh] legally the Commission was determin'd by the dem[ise] of the King they held Examinations taken before Notice of the same to be good—& should be allow'd especially in a Court of Equity—where the Proceedings ~~Ar~~ Juri naturali³² & not according to the strict Course of Law— But the Judges were further of Opinion—that the Witn[esses] should be call'd—& their former Examinations [&] Interrogatories tend[r]ed to {Su[ch] of} them as were alive—& [S]o enquire if they approv'd them— Now G[entlemen] does not this Case answer itself that tho[ugh] the Depositions were to be allow'd in a Court of Equity where [&c?]. Yet the Judges were of Opinion—Such of Witn[esses] as were alive should confirm their former Depositions And as to such as were dead—it would be the Height of Injustice—to destroy their Evidence—as it is Said in 3 P. Will—196³³—for in a Case of the like Nature it was adjudge'd That if the Depositions of a [Per]son who is dead should be suppress'd [the] *torn* by the [Act] of God—would be quite depriv'd of the benefit of his Testimony— But G[entlemen] it is further said that if Acts done after the King's Demise & before Notice were to be adjudge'd void—it would draw in question many tryals by Verdicts of Nisi Prius³⁴ And tryals & Attain'ders upon Goal Deliveries,³⁵ whereupon divers have been arraign'd & Executed—since the King's demise & before Notice thereof. But G[entlemen] this may well be—& yet not contradict what I Say— It is well known G[entlemen] that the Courts of Nisi prius are only Commission'd to determine Issues that have been join'd in the King's bench & Common Pleas and are ever look'd upon in Law as part of the Term in w[hic]h those Issues were join'd It is also known—G[entlemen] that a whole term is in Law—but one day {2 Mod. 317}³⁶ & that all the Acts in it shall refer to the first Day: So that everything that is done at Nisi prius is in Law look'd upon as of the first day of the preceding Term: & therefore by Reference all the Acts that were done after the King's demise & before Notice—may well be good— And as the Trials by Goal Delivery—are mention'd together with those of Nisi prius it is not to be presum'd—but they all stood on the same foundation And that the Sessions were begun before the King's demise—& indeed it is morally impossible but that if Commissions were granted—

that the King should demise before the Sessions could commence.
[page break]

Thus Gentlemen I think the Authority of that Case is well avoided—& now We are come to the 2^d. Objection—viz— The Inconvenience that would ensue {to Society} from the want of a proper Authority to execute the Laws. No one can wish better to Mankind in General, & in particular to my Country Gentlemen than myself— But I cannot think that in consulting the Wellfare of the Community, the Prærogative of the King should be swallowd up— The Happiness of the Executive Gentlemen certainly consists in the Exact Ballance of both— Nor do I believe the Inconvenience that may be imagin'd can result from this Doctrine— If the Consequence of it was, Impunity to all Offenders—till new Commissions were granted— This would be a strong a Weighty Reason against it— But We are to Consider Gentlemen that though there are no Officers to administer them, that the Laws still continue in force—though the Executive Power be dormant awhile—the Laws are always awake—they may still be offended against though at present that Offence cannot be punish'd. The Authority existing—though it has not been exerted—So that the Confusion & Anarchy—which might be apprehended—all vanish: Besides it cannot give Encouragement to Offenders {the Seditious & wicked}—for as soon as they can hear of such a thing, New Appointments will be made—

And further Gentlemen Suppose Notice to be necessary—& that it is had all the former Commissions are determin'd—but if no new ones are made out—they are liable to the same Inconvenience as where they determine by the Death: And what great Damage can ensue from making them void—an hour or two sooner—for though the Case be put of America—as being hardly possible a thing of this Nature could happen in England—yet it is the same as if it were to happen here—& if it would be so in such a Case—the greater Inconvenience that would ensue from the Length of time it would require to receive the News in America—will make no Alteration—nulum tempus occurrit regi:³⁷ But Notice too slight a foundation to build Power on. [page break]

And now Gentlemen as to the last Objection **Rex nunquam moritur &c**³⁸ And I take it Gentlemen that there is great Difference between saying that the King never dies—& that all his Acts bind his Successor—between saying the King never dies & that he lives for Ever. We have seen before that notwithstanding this Maxim—the Law makes a Distinction between a King's predecessor &

Succ[ess]or—& that the former cannot restrain or abridge the Prærog[ative] of the Latter. 4 Ins 156— A League made between 2 K[ing]’s doth not extend to Succ[ess]ors w[ith]out naming them³⁹— altho[ugh] by our Law Rex nunq[uam] &c

And as all Comm[issions] Run in the K[ing]’s name this is a parallel Case & so indeed are those I have quoted before—w[hic]h all agree that by the dem[ise] of the K[in]g—all Comm[issions] determine— But the Real Sense of the Maxim proves what I say & is in fact a direct Authority for Me—for it ~~can mean~~ this it must be mean & this alone, that with Respect to the Community the K[ing] never dies—& ~~th[ere]~~ for as soon as one dem[ise] ano[the]r instantly succeeds So that there is never a Defect of Executive Power Since as quickly as it de-vested out of one, it is vested in Ano[the]r & the Dem[ise] of one K[ing] is the Succession of ano[the]r Thus, G[entlemen] the Royal Author[ity] ever preserves the Peace of Society—nor does the death of the Royal Person affect the Continuance of his Regal Dignity & Power— [page break]

From what has been said G[entlemen] I draw these Conclus[ions] That by the Dem[ise] of one King—the Executive Power is instantly vested—in his Succ[ess]or— That by no Act of the Pre[de]c[ess]or it can be restrained in the succeed[ing] Prince— That his Right is the same before Notice as after— That the making Notice so material is dang[erous] & Inconv[enien]t— And that Nothing is to be apprehended from the contrary Doctrine

[rotated on lower half of page:]

The same Danger would accrue from a Power to infringe the Authority of the Successor, as from a Right to appoint ano[the]r

The Prærogative of the King calculated for the good of the People, & therefore Sir M.H. in his Hist Cor holds that the King cannot Resign his Sovereignty w[ith]out his Parl[iamen]t⁴⁰

And so great Regard is had to the Prince on the Throne—that he is lookd on the King w[ith]in the Stat[ute] of 25 E. 3.⁴¹

AD (PPL-JDFP)

¹ *Votes* (1761), 14.

² JD, “Opinion on the 40 [per] Poll Act in Maryland,” Oct. 1, 1773, PPL-JDFP.

³ See Samuel Nevill, *The Acts of the General Assembly of the Province of New-Jersey, From the Year 1753* (Woodbridge, N.J.: J. Parker, 1761), 390–91.

⁴ Lat. The king can do nothing except by law. 11 Coke, *Reports* 74.

⁵ 9 Coke, *Reports* 23. “Anthony Lowe’s Case” (1610) decided that the king by his charter may not alter the law.

⁶ 21 Ric. 2 (1397): confirmation of liberties and franchises.

⁷ 1 Hen. 4. c. 3 (1399): confirmation of liberties, charters and statutes, indemnity, repealed all proceedings in Parliament of 21 Ric. 2.

⁸ See, for example, James Tyrrell, *Bibliotheca Politica: or, an Enquiry into The Antient Constitution of the English Government* (London: D. Browne et al., 1718), 670.

⁹ 9 Hen. 3. c. 29 (1224/25). Henry III issued the final and definitive version of Magna Carta.

¹⁰ In October 1483, Henry Tudor, second earl of Richmond (1457–1509), conspired with Henry Stafford, second duke of Buckingham (1455–1483), to take the throne from Richard III (1452–1485) in a series of unsuccessful rebellions across southern England and parts of Wales. The uprisings are collectively known as Buckingham’s Rebellion.

¹¹ In 1484, Parliament passed a bill of attainder against 104 persons who had allegedly taken part in Buckingham’s Rebellion against Richard III to place Henry Tudor on the throne. A third of the men were pardoned, and the statute of 1 Hen. 7 c. 6 (1485) revoked the charges, pardoning the rest.

¹² Probably a reference to 3 Coke, *Institutes* 7: “If treason be committed against a King *De facto*, *et non de jure*, and after the King *de jure* cometh to the Crowne, he shall punish the treason done to the King *de facto*.”

1 Hale, *Pleas* 272–73, 11 Hen. 7, c. 1 (1529): “The King’s Pardon to all Persons of All Offences, Forfeitures, Pains of Death and Body, Except Treasons, Murder, &c.,” might exempt persons “from the danger of any treason by the statute of 25 E. 3,” and that its protections extended only to “a king *de facto*, tho not *de jure*, for in truth such was Henry VII.”

¹³ Jenkins 307, Case 83: “The King cannot grant to any one a Power to dispence with any penal Statute. Justice and Mercy are inseparably annexed to the Crown, and cannot be transferred.”

Jenkins 171, Case 36: “The King cannot grant Power to any to make Justices of Oyer and Terminer; but he ought to constitute such Justices himself: For it is an high Prerogative.”

¹⁴ 4 Coke, *Institutes* 224. In “Of the Courts of the Cinque Ports,” Coke states: “The mannor of *P*. within the Cinque ports was holden of the King as of the honor of Egle, and escheated to the King for want of heir, the King granteth the Mannor of *P*. to another. And it is adjudged that the seison of the King in this case doth not make it of another nature then it was afore: for the priviledge runneth with the land.” In other words, one king cannot abridge the authority of another king; here we are told that when some manor was escheated to the king, his seisin (the conveyance of the property) could not be altered in character, presumably because allowing the king to alter it would mean he had the authority to abridge what some other king had done.

¹⁵ The Last Will of Richard II, April 16, 1399: “Also we will and ordain that the residue of our gold (the true debts of our household chamber and wardrobe being paid, for which payment we bequeath twenty thousand pounds) shall remain to our successor so long as he shall approve ratify and confirm, keep and cause to be kept and to be firmly observed all and every of the statutes ordinances appointments and judgments made done and returned in our parliament of the seventeenth day of the month September begun at Westminster in the twenty-first year of our reign.”

¹⁶ 1 Hen. 4 (1399).

¹⁷ 2 Brooke 141–45 is the entry for *Prerogative le Roy*: “91. *Oxenbridge*, the King is able to have seized without office from a lord or one who is without heir if the same should be attainted by treason, and this is possible for it cannot revert to the heir. And

if it falls into reversion, the King is able without further delay and the same goes from the tenant from out of the reversion to the King should the tenant deny the King had had made the seizure without office. Also [according to] *Hussey* this was the law; also to *Fisher* these were good laws because the freehold should not be in suspense, contrary to or in alienation of a mortmain [i.e., held by a corporation], and according to *Hussey* and *Fisher*, by this way it reverts to the King by surrender by which the freeholding is enrolled to the King without any other record because it is a matter of [record] in the enrolment and of others who saw it done.”

¹⁸ 7 Coke, *Reports* 32 a. “Discontinuance of Process, &c. by the Death of the Queen.” Coke finds that “[b]efore that Act [1 Edw. 6 c. 7] at Common Law, if a Man had been indicted and convicted by Verdict or Confession before any Commissioners, and before Judgment the King died, in that Case no Judgment could have been given; for the King, for whom the Judgment should be given was dead; and the Authority of the Judges who should give Judgment was determined: And this Act doth remedy those special Cases. But all the King’s Suits by original Bill, Information, or Indictment, for any other Offence, do remain as at the Common Law.”

Moore 176: “*Walmsley* mova que lou un estatute est continue durant le volent le Roy, si demise le Roy ad determine l’estatute. Et tout le Court agreea que demise le Roy ad determine son volent, come Justice del Bank sont Justices *durante beneplacito*, & demise le Roy est determination de leux Patents, Et Anderson dit si le Roy grant rent *durante beneplacito*, le demise le Roy est determination del rent [LFr. *Walmsley* moves that where a statute is continued during the will of the King, if the King dies, the statute is ended. And all the Court agrees that the death of the King ends his will, as Justices of the Bench are Justices *during good pleasure*, and the King’s death is the end of his Patents. And Anderson said that if the King grants a rent *during good pleasure*, the King’s death is the end of the rent].”

It is unclear to what JD is referring. The citation suggests 2 Keble 355, but none of the cases on that page are relevant.

1 Anderson 44: “Le Successor et le Heir de chescun Roie et Roygne deceased poit escryer et commence lour reigne le dit jour que son Progenitor morust. Et que tous Patentes des Justices de le un bench et le auter, Barons de le Exchequer, viscounts, Escheaters, et Commissioners de Oyer et Terminer, Goale delivery et de Peace, et del Attorney General le Roy sont determines per mort le Roy en que nome ils sont fait. [LFr. The successor and the heir of each deceased King and Queen may announce and begin their reign the same day that his progenitor did die. And all of the patents for the Justices of the Bench as well as for the Barons of the Exchequer, viscounts, escheators, and commissioners of oyer and terminer, gaol-delivery, and of the Peace, and of the Attorney General which were made in the name of the King before his death, they are made].”

¹⁹ The Court of Oyer and Terminer was charged with inquiring by means of a grand jury into misdemeanors, felonies, and treasons. For a discussion of Pennsylvania and Delaware courts, see “The Legal Papers and their Context” in Volume One of the present edition.

²⁰ 1 Edw. 6, c. 7 (1547): “The Continuation of Actions After the Death of Any King.”

²¹ 6 Ann., c. 7 (1707): “An Act for the Security of Her Majesties Person and Government and of the Succession to the Crown of Great Britain in the Protestant Line.”

²² 2 Shower 317: “There are but three Cases where Notice is not necessary. 1. Either in Cases of Conditions precedent, there Want of Notice will not excuse. 2. Where the Things that Notice is required of be of a publick Nature. 3. Where the Party imposed the Thing on himself.”

²³ That is, the body politic.

²⁴ All passages reference *The City of London v. Vanacre*, Trin. 11 Will. 3, B.R. (1699), 1 Salkeld 142. In *The City of London v. Vanacre* (1699), it was decided that “no Freeman of the City chosen to be Sheriff of London, shall be exempted from that Office.” Upon objection “[t]hat the By-law does not provide that the Party shall have any Notice of his being elected,” it was not allowed: “For supposing that, yet the Freemen are represented by the Livery-men; and that is represented must take Notice as much of the Act of the representative Body, as if present; besides, the Election is a notorious thing, and there is a Proclamation notifying it.”

Carthew 480: “the Power of making *By-Laws* consisteth in the Corporation, and extends no farther than to what concerns the good thereof; but the Sherifffwick of London and Middlesex was a particular Franchise granted to the Citizens &c. long after they were incorporated; and the Office of Sheriff of Middlesex is not within their Limits of Jurisdiction, therefore not within the Power of their By-Laws, which Power cannot extend beyond the Limits of the Corporation; and if the Sherifffwick of Middlesex is out of the Reach of this By-Law and the Sherifffwick of London within it, yet the whole By-Law is void, because the Penalty is entire.”

12 *Modern* 272–73: “Every citizen is supposed to be an Inhabitant, and dwelling there, and present at all publick Meetings; and if he be not, it is his own Neglect, of which he shall take no Advantage.... It does not appear by the Return, that the Election is made by Livery-Men, but must be intended to be by all the Citizens; but admitting it was, every Citizen is obliged to take Notice of what they do, because they represent the whole; they are virtually present, and must take Notice, as all People do of Parliament Acts. The Election of Sheriff is a notorious Act, and the Proclamations of it on the Hustings is publick.”

5 *Modern* 442: “That every Freeman and Citizen, being a Member of the Body Politick, is supposed to be present where the whole Body resides; and tho’ in Fact one of the Members should be absent, yet it was his Duty to be there, and he is supposed in Law to be there: he shall be obliged to take Notice of this Election at his Peril.”

²⁵ For Jenkins 171, Case 36, see n. 13, above.

²⁶ Here, JD is probably referring to 2 Brooke 141–45 (see n. 17, above).

²⁷ The maxim *ubi jus ibi remedium* (where there is a right, there is a remedy) is understood conversely to mean that without a right, there is no remedy for a wrong. The maxim is exemplified in *Ashby v. White* (1703). See also 1 Bacon, *Abridgment* 28.

²⁸ Lat. That which was originally void does not by lapse of time become valid.

²⁹ Lat. No man can give that which he has not.

³⁰ Sir Randolph Crewe (Crewe, c. 1559–1646) was chief justice of the King’s Bench. In *Crew v. Vernon* (1625), the issue was commissioners who examined witnesses after the death of James I but before notice of his death.

³¹ Lat. the king never dies.

³² Lat. natural right.

³³ 3 Peere Williams 196, “Thompson’s Case,” Trin. (1733): “[A]nd as to the Witness that died after Examination, if his Depositions were to be suppressed, the Plaintiff, by the Act of God, would be quite deprived of the Benefit of his Testimony.”

³⁴ Lat. if not sooner, if not before, or unless first. Nisi prius courts were those of original jurisdiction—Court of Common Pleas, Court of Exchequer, and King’s Bench—as opposed to appeals courts.

³⁵ Gaol-delivery: “The clearing a jail of prisoners by bringing them to trial, esp. at the assizes; hence, the judicial process by which every prisoner awaiting trial in a jail is either condemned or acquitted at the assizes” (*OED*).

³⁶ 2 *Modern* 316–17, *Birch v. Lingen*, Trin. 34 Car. 2, B.R. (1682). The case considered a twenty-five-year-old judgment on a bond for which “in one of the *Continuances* from one Term to another there was a blank.” The defendant brought a writ of error, but

the plaintiff “got a Rule to amend and insert the *Continuance*, suggesting to the Court, that it was a Judgment of a few Terms.” The defense argued the judgment “was got by a trick and on a false Suggestion, it being a Judgment before the Restoration of this King, and a Discontinuance not amendable, for ’tis the Act of the Court.” The defense cited *Friend v. Baker* concerning a motion made to amend a certified record “because day was given over to the Parties from *Easter* to *Michaelmas-Term*, and so *Trinity-Term* left out, where by the Opinion of *Roll* Chief Justice, that the giving of a day more than is necessary is no Discontinuance; but where a day is wanting, ’tis otherwise.” William Jones was of the opinion that the blank in the continuance could not be altered, “for where Judgment is entered for the Plaintiff, the Court may, upon just Cause, alter it the same Term for the Defendant, but not of another Term, the whole Term being but one Day in Law.”

³⁷ Lat. Time does not run against the king. This is a legal doctrine protecting a king’s right to prosecute criminals regardless of how much time has elapsed since the crime.

³⁸ Lat. A king never dies in secret.

³⁹ 4 Coke, *Institutes* 156: “It is said in 9 E. 4. that a League made between two Kings (without naming of successors) doth not extend to successors, although by our law *Rex non intermoritur* [Lat. the king does not die unobserved].”

⁴⁰ 1 Hale, *Pleas* 104: “If a king voluntarily resign ... and this resignation admitted and ratified in parliament, he is not afterwards a king within this act.”

⁴¹ 25 Edw. 3 (1351): The “Treason Act” proclaims that “[w]hen a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen or of their eldest Son and Heir ... that ought to be judged Treason.”

32

From Elizabeth Moland, April 23, 1761

Good S[i]r¹

I have found a bond of John mee’s² & a Settlem[en]t of Edward Thomas’s Estate, as for the rest of the Papers you rote to me for I cant find them.

but S[i]r I must trouble you onst more to Change the rest of the Gold for me as the theair is nobody Else I would Chuse to beg Such a favour of. I have inclosed twenty 5 Peaces what they are I dont know. People have been with me Wanting mony but as I did not no the Gold I was forst to find them a way as they Come, which made me veary uneasy, but I {have} still a Greater Trouble than this which is my Brother Billy³ has neglected his Learning So much & behaves in Such a manner to the Children that is with M^r Treat⁴ fiting & giving ill Language than he insists upon his being brought home, Mama⁵ Sent for him this Morning and God nows what I shall do with him when he Cumes, Nobody can tell how much I have expearand the Loss of my Dear Papa, my brothers was allways my Papas Greatest trouble, and now they are mine & I assure you When I reflect what Brothers I have

April–December 1761

it all most brakes my Hart. I hope you will forgive the liberty I take in troubling you with my impertinant Scrawl for I harly no what I rite I am in so much trouble about billy for I dont no any Trade that I can put him to & People will reflect upon me if he dont git his Learning and think I have neglected him I should be much Obliged to you if you will think a Little for me and let me no what I Shall do with him. Mama & Sister⁶ Joyn me in Compliments

Elizabeth Moland⁷

Apr. 23.

1761

No doubt you will think me rong to Send mony by will⁸ but There nobody Else to do it for me & Sarvant is much

ALS (PHi-Logan)

¹ Elizabeth (Betsey) Moland (1743–1783) was the Molands' eldest daughter.

² John Mease (1738–1825) was a Philadelphia merchant.

³ William Moland (1749–1817).

⁴ Malachi Treat (c. 1735–1795), born in Abington, Pa., was a physician in New York who later served in the Continental Army. He died of yellow fever while serving as physician for the port of New York.

⁵ Catherine Hutchinson (d. 1780) and John Moland married in 1738.

⁶ Hannah Moland (b. 1744) was the Molands' second eldest daughter. See also doc. 2:62, below.

⁷ Moland addressed this letter: "To / John Dickinson Esq^r / in Philadelphia."

⁸ Will was a black slave. In his will, John Moland stipulated that he should be sold.

33

Notes for *London Land Company v. Joseph Campbell*, [c. April–December 1761]

This and the following document come from JD's work for the London Land Company. Formally known as the Pennsylvania Land Company of London upon its establishment in 1699, it was comprised of English land speculators who purchased tracts of land in Pennsylvania and New Jersey and then disposed of them "on the leasehold plan, retaining ownership in fee, thereby creating a perpetual trust whereby a continuous revenue or profit would be forthcoming."¹ A 1760 act of Parliament dissolved the joint stock company, which began to sell off its lands.² Most leaseholders purchased their lands in fee simple.³ The dating of this and the following document is based on the company's commencement of ejection proceedings against Lancaster County, Pennsylvania, tenants between April and September 1761. In this case,

at issue was competing land deed claims between JD's client, the land company trustees, and Delaware yeoman Joseph Campbell, the basis of whose claim is not specified in JD's notes. JD contends that the land company had title to the lands. He argues that one deed in the chain of title that Campbell claimed was ineffective—that from Francis Gamble to Thomas Story—was effective because it could be proved in three ways. In addition, he argues that another deed in the chain of title, possibly from the land company's original purchase, was legally sufficient because it was old enough to be recognized without being proved.⁴

L[ess]ee of Land Co[mpany] }
 v } Notes
 Joseph Campbell⁵

To have same Force as [f[or]f[eitures]] or Enroll[men]ts⁶ at Westm[inster]

Shall it be suff[icien]t Evid[ence] to record & not to be given in Evid[ence]

Intended to make Copy Evid[ence]

Are all Deeds executed here & not recorded in a Year— No Evid[ence] [*page break*]

London Land Co[mpany] v Jos[eph] Campbell { ^x }Str. 1211. 10 Co. 101. Fitz. 81. L ^d . Raym. 1297. 2 Ins. 487. 427. Co Litt. 45. 238. a. 268. b. 290. a. 12 Vin. 262. ⁷	}	Deed to Gamble to Story ⁸ may be [pro]vd 1 st —By [Pro]of before Mayor of NewCastle— ⁹ { ^x } Reason of the Act of As- sembly ¹⁰ —ubi eadem ratio &c ¹¹ Bishop of Norwich—Vide Note Book tit[le] Stat[ute]s ¹² 2 ^{ly} By Curtis's Hand—[pro]ve other Witn[esses] not in the County ¹³ 3 ^{ly} By Possession going accord[ing]ly Manlove's Lease Q[uære] [pro]of Vide Note Book tit[le] Deed 29. ¹⁴
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Old Deed is Evid[ence] Bunb. 185. 3 Sal. 154
 12 Vin. 57. 85.¹⁵

Old Rent Rolls—Ev[idence]—because being
antient, they cant be made for the
[pro][prie]tors.
12 Vin. 221.¹⁶
1 Keb. 877. Wright v Sherrard—.¹⁷
~~2 Keb. 126. Smith v Rawlins. Tri[als] [per]~~
[pais] 220.¹⁸

Upon [remainder missing]

AD (PHi-Logan)

¹ *Historical Sketches: A Collection of Papers Prepared for the Historical Society of Montgomery County Pennsylvania*, 7 vols. (Norristown, Pa.: Herald Printing and Binding Rooms et al., 1895–1935), 4:174.

² See 33 Geo. 2, c. 53 (1760): “An act for vesting certain estates in *Pennsilvania, New Jersey, and Maryland*, belonging to the proprietors of a partnership, commonly called *The Pennsilvania Land Company* in London, in trustees, to be sold, and for other purposes therein mentioned.” The act was abstracted in *PG*, Oct. 2, 1760. Company shareholders had grown exponentially, making it difficult to track them down when the company dissolved. An advertisement in the *General Evening Post* (London), Oct. 27, 1761, noted that “many Shares in the said Company remain unclaimed.” In 1773, Parliament gave the Hospital for Sick Poor in Philadelphia the company’s unclaimed shares valued at £11,990.

³ *Historical Sketches*, 4:176.

⁴ Mary K. Geiter, “London Merchants and the Launching of Pennsylvania,” *PMHB* 121, nos. 1–2 (1997): 109. See also doc. 2:37, below.

⁵ Joseph Campbell, of Murderkill Hundred, Kent Co., was a yeoman who owned land near the head of the main branch of Murderkill Creek, Black Swamp.

⁶ Enrolment: “The entry or official record of a deed, etc.” (*OED*).

⁷ 2 Strange 1211, *Goodtitle v. Meymott*, Trin. 17 Geo. 2, B.R. (1743): “In the declaration delivered to the tenant in possession, *the said James* instead of *John*, was said to enter by virtue of the demise; and the court refused to amend it, for they considered it as a process. And Mr. Justice *Wright* cited a case, *Hil. 15 Geo. 2.* where the premises were laid to lie in *Twickenham* and *Isleworth* or *one of them*, and the court refused to let the plaintiff amend by striking out the disjunctive words.”

10 Coke, *Reports* 101 a. It is unclear to what JD is specifically referring on this page, which is part of a report on “Beawfage’s Case,” Mich. 10 Jac. 1 (1612), and deals with bonds. It is possible that his note above to “[pro]ve other Wit[nesses] not in the County” means that he is referring to the following section: “for he who is bailed ought to appear in Person, for so much is implied in this Word of the Act (*appear*.) and therefore the Com[mon] Law when any Ten[an]t or Def[endant] was commanded to appear in any Court, he ought before the Stat[ute] thereof made, in all Cases to have appeared in proper Person.”

It is not clear what JD is referring to on Fitzherbert 81.

2 Raymond, *Cases* 1297, Mich. 8 Ann., B.R. (1709): “if a remedial law be made, and only one person mentioned, yet it may extend to others not named, as the statute *de circumsp[ect]e agatis* [13 Edw. 1, stat. 4 (1285)], where the Bishop of *Norwich* is only mentioned, yet all other bishops are comprehended.”

2 Coke, *Institutes* 487: “The Bishop of *Norwich* is here put but for example, but it extendeth to all the Bishops within this Realm.”

2 Coke, *Institutes* 427: “Albeit the letter of this branch seemeth to extend to the Justices of the Common Pleas only, by reason of these words, *Et fi forte ad querimoniam de facto Justic’ Venire fac’ Dominus Rex recordum coram eo* [Lat. And if the King upon complaint made of the Justices cause the record to come before him], (which is by Writ of Error into the Kings Bench) yet that is put but for an example, and this Act extendeth not only to all other Courts of Record (for upon Judgements given in them a Writ of Error lyeth in the Kings Bench) but to the County Court, the Hundred, and Court baron, for therein the Judges were more likely to err.” This page is part of Coke’s exposition on 13 Edw. 1, St. 1 (1285): “The Statute of Westminster the Second,” specifically c. 31, “An Exception to a Plea shall be sealed by the Justices.” JD cites Coke, and 12 Viner 262 in the section on “Statutes” in his legal notebooks (see n. 12, below). In that section, JD notes, “So West 2 ch. 31 giv[ing] a Bill of Except[ion] from C.B. extended to all other Courts, except R.B.”

1 Coke, *Institutes* 45 a.: “If a Bishop make a lease for 21 years, and all those years being spent, saving three or more; yet may the Bishop make a new lease to another for twenty one years, to begin from the making, according to the exception of the Statute, but not a Lease for life or lives, as hath been said, and this concurrent Lease hath been resolved to be good, as well upon the exception of *1 Eliz.* in the case of Bishops.”

1 Coke, *Institutes* 238 a.: “*A.* recovereth an Advowson against *B.* in a Writ of Right, and hath judgment final, the Incumbent dieth, *C.* by usurpation presents to the Church, and his Clerk is admitted and instituted, *B.* dieth; *A.* is put of possession, and the heir of *B.* is not so bound by the judgment either in blood or estate, but that he shall present, *B.* levy a fine to *A.* of an Advowson to him and his heirs, after the Church becomes void *B.* presents by usurpation, and his Clerk is admitted and instituted, this shall put *A.* the Conusee out of possession.”

1 Coke, *Institutes* 268 b.: “Also if land be given to a man in Tail, reserving to the Donor and to his Heirs a certain rent, if the Donee be disseised, and after the Donor release to the Donee and his Heirs all the right which he hath in the land, and after the Donee enter into the land upon the Disseisor, in this case rent is gone, for that the Disseisee at the time of the Release made, was Tenant in right, and in law, to the Donor; and the Avowry of Fine force ought to be made upon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, (*viz.*) of the reversion, shall pass by such release, for that the Donee to whom the Release is made, then had nothing in the land, but only a right, and so the right of the Land could not then pass to the Donee by such Release.”

1 Coke, *Institutes* 290 a.: “*Nota*, it appeareth by the Preamble of the said Act of 32 *H.* 8. and many divers Books, that after a full and perfect execution had by extent returned, and of Record, there shall never be any re-extent upon any eviction: but if the extent be insufficient in Law, there may go out a new extent.”

JD is probably referring to 12 Viner 262: “15. Wheresoever the Evidence does not warrant, prove and maintain the very same Thing that is in Issue, that Evidence is defective, and may be demurred upon.” See also nn. 14, 15, below.

⁸ For Francis Gamble and Thomas Story, see doc. 2:37, nn. 2, 3, both below.

⁹ The deed from Gamble to Story was proven before John French (d. 1728), then mayor of New Castle, on Aug. 8, 1726.

¹⁰ Here, JD may be referring to “A Supplement to an Act of General Assembly of this Government, entitled, ‘An Act for Acknowledging and Recording of Deeds’” (1751). The act declared a deed executed outside of Delaware, whether before or after enactment of the act, and proved before “any Mayor, Chief Magistrate, or officer, of the

city, town, or county, where such deeds, conveyances, or powers, are or shall be made and executed” to be as good as if proved in the proper county where the lands lay. See *Laws of the State of Delaware*, 4 vols. (New Castle and Wilmington, Del.: S. and J. Adams, M. Bradford and R. Porter 1797–1816), 1:308–10.

¹¹ Lat. *ubi eadem ratio ibi idem jus*: “Where the same reason exists, there the same law prevails” See 7 Coke, *Reports* 18 b.

¹² JD is referring to entry number 34 under the subject “Statutes” in his legal notebooks. JD summarized the subject of that entry as “Remedial S[tatute] extends to [per]sons not ment[i]one[d],” and the content refers to the Statute of Circumspecte Agatis [13 Edw. 1, stat. 4 (1285)], and the cases about that law discussed in n. 4 above (Legal Notebook 2, p. 200, PHI-Logan). In the Statute Edward admonishes his judges to “Use yourselves circumspectly in all Matters concerning the Bishop of Norwich and his Clergy, not punishing them if they hold Plea in Court Christian of such Things as be meer spiritual” (1 *SAL* 242–43).

¹³ John Curtis was the witness who appeared before the mayor of New Castle to testify to the deed’s validity. The other witnesses were John Richmond, a Quaker mariner who affirmed the deed at Philadelphia in May 1726, John Pearson, and David Rowland.

¹⁴ Entry 29, under the subject “Deeds & Delivery,” in JD’s legal notebooks has two parts. The first cites various cases showing that a “D[eed] takes effect from the first Delivery.” The second cites cases discussing the topic of “Intention,” most notably the idea that a “D[eed] ought to be construed accord[in]g to the Intention of the [par]ties” (Legal Notebook 2, p. 165, PHI-Logan).

¹⁵ Here, JD probably meant to cite *Bunbury* 285, *Benson v. Olive*, Trin. 4 Geo. 2 (1730): “A Deed was produced by the Plaintiff dated 30th of *March 1690*, and it was admitted it was old enough to be read without Proof.”

3 Salkeld 154, *Lynch v. Clerke*: “an *old Deed* is good evidence, without any Witness to swear that it was executed.”

12 Viner 57: “9. Upon a Trial at Bar, a *Deed* was offered in Evidence, executed *Thirty-six Years ago*, without proving the Hands, which was opposed by the other Side, but admitted by the Court, who said, there was no fixed Rule about it, but that it had been allowed, where the Deed was but Twenty-five or Thirty Years old.”

12 Viner 85: “10. An *old Deed* is good Evidence without any Witness to swear that it was executed.”

¹⁶ 12 Viner 221: “1. *Old Rent Rolls* admitted to be Evidence to prove Fee Farm Rents, for being very ancient it cannot be supposed they were made with a View to serve the present purpose.” See also n. 4, above.

¹⁷ 1 Keble 877, *Wright v. Sherrard*, Pasch. 17 Car. 2, B.R. (1665): “An ancient Deed is good Evidence, without proving, or Seal on it.”

¹⁸ 2 Keble 126, *Smith v. Rawlins*, Mich. 18 Car. 2, B.R. (1666): “On evidence to a Jury at Bar in ejectment, the Defendant challenged a Witness produced by the Plaintiff to prove a Lease made by the Dean and six Residenciaries of *Hereford*, under whom he claim’d.... They admitted a deed found in the *Archives* of the Chapter to prove an endowment of Vicar, being but concurrent evidence, though it appeared not to be ever seal’d and deliver’d.”

Duncombe 220: “*Trespass* lies for Lessee in Ejectment on a fictitious Lease to recover mean profits during the continuance of that Lease mentioned on Record: And the Recovery shall maintain it. Otherwise if brought by the Lessor, for he is no party to the action.”

Notes for *London Land Company v. Several Tenants*,
[c. April–December 1761]

The London Land Company’s planned land sales in the wake of its legislated dissolution generated objections and competing claims. Here, JD lists several ejectments being brought against tenants on company land in Delaware.

London Co[mpany] }
v } Ejectment
Sev[era]l Ten[an]ts }

Printed Copy of an Act
of Parl[iamen]t good [pro]of of it
12 Mod. 215.
216.¹ [*page break*]

Bring Ejectments in Kent Co[un]ty for the Trustees of the London Land Company—ag[ains]t Absalom Morris² {Ten[an]t in Poss[essi]on—} for 1000 Acres of Land calld Edmondsberrie in Mispillion Hundred³

Ano[the]r for 558 Acres of {arable} Land, ~~calld Carbron~~⁴ {& 558 Acres of Woodland} in Mispillion Hundred Rob[er]t Buchanan⁵ Ten[an]t in Poss[essi]on—{a} Lease has been given for this Land

Ano[the]r for 1000 Acres of {Arable} Land ~~calld Longaere~~ {& 1000 Acres of Woodland} in Mispillion Hundr[e]d Philemon Arnett⁶ Ten[an]t in Poss[essi]on—

Ano[the]r for 1200 Acres of {arable} Land ~~calld the Playnes of Jericho~~⁷ {& 10{2}00 A[cre]s of Woodland} in Mispillion Hundr[e]d W[illia]m Barker⁸ Ten[an]t in Poss[essi]on—

Ano[the]r for 600 Acres of {arable} Land ~~calld Longford~~⁹ {& 600 Ac[re]s of Woodland & 600 Ac[re]s of Marsh} in Mispillion Hundred W[illia]m Pegg¹⁰ Ten[an]t in Poss[essi]on—

[*remainder of page blank*]

[*upside down in lower right corner:*] London Land [*page break*]

Rob[er]t Buchanan is in Possession of Lon[g]

==

{Prudence Sipple—}¹¹

{Q[uære] Comp[any] Title?} Thomas Craig—W[illia]m Pegg—
Eliza[beth] Merchant & Benjamin Brown—& Joseph Greenwood of
Ancaster¹²—& W[illia]m Watson—& [illegible]{John} Arnit[tt]¹³

==

{Q[uære] Comp[any] Title} Thomas Sheriff—& W[illia]m Morris of
Drapers Berry¹⁴—Peter Russum—¹⁵

==

W[illia]m Arthurs of Carbron—Edmund Melvin—Thomas Ca-
hoon—¹⁶{[pur]chasd from Mr. Killen as Parthalia Plains}¹⁷

==

W[illia]m Barker, ag[ains]t whom the Ejectm[en]t is now brou[gh]t as
in Possession of Jericho, holds all his Claim within Parthalia Plains,
except 20 or 30 acres of Jericho— [No View?]

==

Edmund Melvin of Jericho—& Part of Jericho

==

Matthew Jarrett—Edmund Melvin, Cha[r]les Townshend—&
Tho[ma]s Ringold of Edmondsbury—¹⁸

==

Moses Clampitt, W[illia]m Clampitt Guardian a Girl of the Name of
Clampitt—of Longacre—Mary M.^cDaniel[s?].¹⁹

[remainder of page blank] [page break]

London Comp[any]’s Lands

~~W[illia]m Pegg~~

W[illia]m Arthurs a Witn[ess] to [pro]ve the W[hite] O[ak] Stump the
Corner of Carbron—²⁰

Printed Copy of an Act of Parl[iamen]t is good [pro]of [of] it—12
Mod. 215 216.

AD (PHi-Logan)

¹ 12 *Modern* 215–16, *Dupays v. Shepherd*, Mich. 10. W 3, B.R. (1698): “Case on a Wa-
ger concerning the Day of the Conclusion of the Peace; and to prove it to be on the
tenth Day of *September* the printed Proclamation was produced, and it was objected,
that it ought to not be given in Evidence, unless it had been examined by the Record
inrolled in Chancery, or proved to have been under the Great Seal. But *per Holt* it was

held good notwithstanding; and that such Things as these in Print, as are of as publick Nature as a publick Act of Parliament, and that even a private Act of Parliament in Print, that concerns a whole County, as the Act of *Bedford-Levellis*, may be given in Evidence without comparing it with the Record.”

² Probably Absalom Morris (1715–1764), a farmer of Murderkill Hundred, Kent Co., Del.

³ Mispillion Hundred then extended from Delaware Bay to the Maryland line and from the southern boundary of Murderkill Hundred to the northern boundary of Sussex Co. Most of the tracts listed in this document were in what is now Milford Hundred, created from the eastern part of Mispillion Hundred in 1830. The Edmondsberry tract was located “on the Head of the main Branch of the murder Creek,” now Murderkill River. The tract was thus near the border between Mispillion Hundred and Murderkill Hundred.

⁴ The Carbron tract was located on the south side of “Murder Creek.”

⁵ Possibly Robert Buchanan, Jr. (died c. 1766), a yeoman. Buchanan owned 520 acres located “on the South side of the main Branch of the Murtherkill Creek in Mispillion Hundred” and bordering on the Parthalia Plains tract, presumably within either the Longford or Longacre tracts (Delaware Land Records, Roll No. 781, De-Ar).

⁶ Philemon Arnett was taxed in Mispillion Hundred.

⁷ The Plains of Jericho were located “on the West side of Delaware River ... and on the south side of the main Branch of the Murder Kill.”

⁸ William Barker (d. 1773) was taxed in Mispillion Hundred. In December 1772, he was in possession of two tracts of land, totaling about 201 acres, offered for sale by the land company. See *PG*, Dec. 9, 1772.

⁹ The Longford tract was located “on the south side of the main branch of the murder creek” in Kent Co.

¹⁰ By a deed of Aug. 9, 1743, William Pegg, a yeoman, acquired 50 acres of land “in Muspillion Hundred Between the two head Branches of the Murderkilm Creek which is Commonly Called Browns Neck” (Delaware Land Records, Roll No. 779, De-Ar).

¹¹ Prudence Garrett Sipple was the widow and an executor of John Sipple (1675–1752). In an April 1754 transaction as executor, she sold land in Murderkill Hundred to Joseph Campbell; in November, she purchased about 300 acres in the Longacre tract on her own account (Delaware Land Records, Roll No. 780, De-Ar).

¹² In 1759, Thomas Craige (Craig; died c. 1768) purchased land in Mispillion Hundred “on the South side of one of the main Branches of the murder Creek.” Elizabeth Merchant was possibly the mother of William Merchant (Marchant, Marchand; died c. 1765) and widow of William Merchant (d. 1741). In August 1765, Benjamin Brown, Jr., a “Gentleman,” sold Nathan Manlove two tracts “in Muspillion Hundred and on the West Side of Delaware Bay and on the South side of the main Branch or head of Murder Creek.” One survey began at a corner oak of the Longford tract, and touched on “Thomas Craige land.” The second survey touched “John Arnets Land.” In 1772, the land company was seeking to sell 115 acres “in the possession of the Heirs of Benjamin Brown.” In the early 1760s, one Benjamin Brown paid taxes in Mispillion, Murderkill, Dover, and Little Creek Hundreds. Joseph Greenwood (died c. 1773), probably the man taxed in Mispillion Hundred in the 1750s and 1760s, acquired 130 acres of the Longford tract from his sister, Mary Ann Greenwood, in 1768 (Delaware Land Records, Roll No. 781, De-Ar; *PG*, Dec. 9, 1772).

¹³ William Watson, a brother-in-law of Thomas Craige, was a yeoman. He owned land “on the South Side of the main Branch of the Murther Creek in Mispillion Hundred.” John Arnett, who was taxed in Mispillion Hundred, witnessed Craige’s father’s will (Delaware Land Records, Roll No. 781, De-Ar).

¹⁴ In February 1759, Thomas Sheriff of Talbot Co., Md., bought 150 acres “in the forrest of Mispillion Hundred and on the north side of the Murderkill Creek commonly called Browns Branch,” part of a larger tract called “Rawlings Lott.” He remained in the area as a yeoman farmer until at least late 1777. Perhaps William Morris, Jr., a Wilmington, Del., attorney who bought several properties bordering on Browns Branch in March 1755. The Drapers Berry tract of 1,000 acres was located “on the North side of the south West Branch of the murder Creek.” See Delaware Land Records, Rolls Nos. 780, 781, De-Ar.

¹⁵ Most likely Peter Russum (d. 1772), a yeoman who purchased part of Rawling’s Lot in Mispillion on the north side of the southwest main branch of Murder Creek in 1764.

¹⁶ William Arthurs was taxed in Mispillion Hundred from at least 1752 through 1764. On March 31, 1762, Edmund Melvin, a yeoman, bought land in Brown’s Neck that touched on “the main Branch of Murder Creek.” He was taxed in Mispillion Hundred at least from 1757 to 1770. Probably Thomas Cahoon, who was taxed in Mispillion Hundred, although Thomas Cahoon (d. 1770) and his son Thomas Cahoon, Jr., both of Duck Creek Hundred, were also in Kent Co. at this time (Delaware Land Records, Roll No. 781, De-Ar).

¹⁷ William Killen (1722–1805), JD’s former tutor, sold Thomas Cain 59½ acres “supposed to be Part of a Larger Tract of Land called Parthalia Plains”; Killen’s tract was “on the South west side of a Small Branch of the Murther Creek in Browns Neck.” He also sold an adjoining 109-acre tract to Moses Clampitt in a deed of Nov. 29, 1769. Killen became chief justice of Delaware and served from 1777 until 1792, after which he served as chancellor from 1793 until 1801. Parthalia Plains was adjacent to the Longacre Tract and to the property owned in the 1760s by Robert Buchanan, Jr. See Delaware Land Records, Roll Nos. 781, 782, De-Ar.

¹⁸ Either Matthew Jarrard, Sr. (Jarrad, Jerrard, Gerrard; d. 1768), or his son Matthew Jarrard, Jr. (died c. 1794), a Kent Co. yeomen. In 1746 the elder Matthew, along with Robert Nice, had been granted land “near the Head of the main Branch of Murtherkill Creek called Black Swamp Branch in Murtherkill Hundred,” which they sold to Joseph Campbell on Nov. 4, 1762. On March 26, 1762, Matthew, Jr., purchased land on the north side of a branch of Murderkill Creek in Murderkill Hundred that bordered Thomas Ringgold’s land and touched on his father’s land in the area. Perhaps Charles Townsend (1700–1772), of Murderkill Hundred, who owned land touching on Murder Creek, and possibly Thomas Ringgold, a farmer of Little Creek Hundred, Del. See Delaware Land Records, Roll No. 781, De-Ar.

¹⁹ Moses Clampitt (c. 1740–1819) was a yeoman of Mispillion Hundred. He was later an officer in the Revolutionary War and moved to Kentucky. In December 1772, the land company was seeking to sell an 89-acre tract in Mispillion possessed by “Moses Clampit.” His brother William Clampitt (c. 1720–1777), of Murderkill Hundred, was a yeoman farmer. William had land touching on the small tract of Parthalia Plains sold by Killen in 1760. He was also the guardian of Ann Clampitt, daughter of his brother Ezekiel Clampitt (died c. 1756). Mary McDaniel was the widow of James McDaniel (died c. 1760) of Mispillion Hundred. The Longacre tract is described in the deed from Gamble to Story as “on the back of the land Ellis Peake called Pathalia Plains and on the side of the Land of John Rawlings.” See *PG*, Dec. 9, 1772; Kent Co., Del., Orphan’s Court Records, De-Ar.

²⁰ Surveys commonly used trees as markers. The survey of Carbron described in Gamble’s deed to Story used four white oaks as marks, including a “corner white oak.” Most likely the corner oak had been cut down and Arthurs was asked to identify the corresponding stump.

Opinion on the Will of Samuel Richardson, June 8, 1761

The manuscript of this document has not been found. It was reprinted in an 1852 law review journal, along with the relevant portion of Samuel Richardson's will and Joseph Galloway's contrary opinion for comparison. The issue addressed by JD's and Galloway's opinions was, given the failure of the will explicitly to dispose of the reversion, whether Samuel Richardson died intestate as to the reversion so that it descended to his children or whether the bequest of the ground rents conveyed the reversion to Joseph Richardson. Galloway held that Samuel's devise of the ground rents did not transfer ownership of the lots from which they were derived, so that "as to the said Reversion the Testator died Intestate, and, of Course, that it descended among his Children, according to the Laws of the Province, the eldest Son taking two Shares."¹ JD held that the bequest of the ground rents conveyed the reversion to Richardson. In a lengthy note, the journal editors provided a brief biography of both men, observing that "Mr. Dickinson's course after this time is well known." They found that, "[w]ith regard to the point of law on which these men, as in other things, differed, the following authorities will show that the balance rather inclines in favor of Mr. Dickinson's arguments."²

I have carefully considered Samuel Richardson's Will, and am of opinion that by the Devise "of all his Ground Rents in High Street, to his son Joseph Richardson, and his Heirs forever, after the Decease of his Daughter in Law, Elizabeth Richardson," the Fee simple of the Lots out of which those ground rents issue, is given to his son Joseph.³

This opinion is founded on two adjudged Cases, extremely similar to the present, tho[ugh] they are, not exactly the same. The first is the Case of Kerry & Derrick, reported in Moore, p. 771 [S. C. Cro. Jac. 104].⁴ A man seized in Fee of Lands in Surrey, and other Lands in Middlesex, made several Leases for Years of them, reserving £10 Rent on each Lease. Afterwards he died, having made his Will in this manner, "Touching the Disposition of my Lands & Tenements, my Will and Meaning is, I do will and bequeath the Rent of £10 in Surrey, to my loving Wife, during her Life, & after her Decease to my father, &c. Item, I give and bequeath to my loving Wife, my House and Tenements in Middlesex, forever."⁵ Notwithstanding the Devisor made in this Distinction of giving the Rent only in Surrey, but the Land itself in

Middlesex; it was determined that the Land in Surrey past to the Wife for her life after the Expiration of the Lease. The other Case is that of Maundy & Maundy,⁶ [2 Stra. 1020, 2 Barn. K. B. 202 cas. tem. Hard. 142, Fitzg. 70, 288,]⁷ adjudg'd in the Common Pleas, & that Judgment confirmed in the King's Bench. This differs from the present only in these particulars;—that the Devisor begins his Will with saying “he disposes of his worldly Estate in manner following:—and after giving five Pounds per ann. to his eldest, &c. undutiful Son, declares he shall have no more Share or Portion.”⁸

The Building Leases being expir'd, the Heir of the eldest Son brought an Ejectment, insisting that the Reversion was undispos'd of; and that however strong the Intention to disinherit the eldest Son appear'd, yet if it is undispos'd of, he must have it. But adjudged against him in both Courts. 1. Because the Devisor's Intention to pass all his Estate was plain, from the introductory Part where he declares his Will was to dispose of all his worldly Estate, and that part where he says what his eldest Son shall have, and no more: 2. The Limitation is to the younger Children and their Heirs, which cannot take Effect, if their interest is only during the Continuance of the Rent; and nothing more common, than for people to speak of their Ground rents, when they mean their House and Lands out of which they issue.⁹

Perhaps it may be objected that Samuel Richardson's Intention to dispose of his whole Estate does not appear so evident, as the Testator's in the Case just above mentioned. But if it be consider'd that Samuel Richardson, in the subsequent Part of his Will, does not take Notice of any Residue of his Estate undispos'd of, and that in the Devise of the Ground Rents to his son Joseph, and his Heirs, he makes use of the words “forever;” which must be utterly senseless, unless they extend to a longer space of Time than the Continuance of the Leases, which the Devisor observes were only Part unexpir'd, I think this objection must vanish.

The 2d Reason given by the Judges above, holds more strongly in the present Case than in that, for the Devise to Joseph and his Heirs, being after a Devise for Life, renders it more improbable that Joseph or any of his Heirs wou'd have any Effect from the Devise, if only the Rent was given. At most, it could take Effect only for one or two Descents, tho[ugh] the Terms in Law give a Fee simple. But the better Opinion seems to be, that in such Case it would not take effect at all; but wou'd go to the Executors of the Devisee, and that I take to be the meaning of the Judges.

John Dickinson Writings and Correspondence

Upon the whole, it seems that “Ground rents” is a sufficient Name to pass the Lands out of which they issue; & if words of Inheritance are annex’d to this Description, they will give a Fee simple or Fee Tail¹⁰ respectively in such Lands, where there is a Reversion in the Devisor.

JOHN DICKINSON.
Philadelphia, June 8th, 1761.

Rpt (*American Law Register* 1, no. 2 [1852]: 79–81)

¹ *American Law Register* 1, no. 2 (1852): 75.

² *Ibid.*, 76–77.

³ Samuel Richardson (d. 1719) was an alderman, judge, assemblyman, and member of the governor’s council. His son Joseph (d. 1751) married Elizabeth Bevan (1678–1740) in 1696.

⁴ Moore 771, *Kerry v. Derrick*, Mich. 44 & 45 Eliz 1., B.R. (1603); 2 Croke 104 translates and paraphrases Moore’s French report: “A man ... made his Will in this manner; *As concerning the disposition of all my Lands and Tenements, I bequeath the Rents of D. to my Wife for life, remainder over in Tail*: The Question was, whether by this Devise, the reversions did pass with the Rents of those Lands: For it was alledged, that the Rent divided from the Reversion is not deviseable.... [T]he Court resolved, that the land it self should pass by this Devise: For it appears, his intent was to make a Devise of all his Lands and Tenements, and that he intended to pass such an Estate as should have continuance for a longer time then the Leases should endure.”

⁵ Here JD is paraphrasing Moore 771: “touching the disposition of my lands and tenements, my Will and meaning is, and I do will and bequeath the rent of 10 l. in *Surrey*, in the Parish of *Egham* to my loving Wife *Margaret Hunt* during her life, and after her decease to my loving Father, and after his decease to my Brother *George*, and after his decease to my Brother *Edward*. And if it please God that they die both without issue, then to *Francis* and *John Hunt* my Brothers, to the youngest first. *Item*, I give and bequeath to my loving Wife *Margaret Hunt* my house and tenement in *Stanes* forever.”

⁶ *Maundy v. Maundy*, Trin. 8 Geo. 2, B.R. (1735).

⁷ 2 Strange 1020; 2 Barnardiston, K.B. 202 (*Manby v. Manby*); Hardwicke 142 (*Maudy v. Maudy*); FitzGibbon 70, 288 (*Mandy v. Mandy*). These citations, likely inserted by *American Law Register* editors, follow the case to 1735. See also doc. 2:91, below.

⁸ JD is paraphrasing the will: “In respect to my worldly estate wherewith it hath pleased God to bless me, I dispose of it as follows ... [T]o *Ventris*, my eldest and undutiful son, I give him, in hopes he may reform, 5 l. *per annum* due on blank tickets in the million lottery. And if any of my other children die, their legacy to go to the survivor, my said undutiful son excepted, who is to have no share or part thereof, nor no more share or portion than I have before given him.” See 2 Strange 1020.

⁹ This entire paragraph is taken almost verbatim from 2 Strange 1021.

¹⁰ For a definition of “fee tail,” see doc. 2:1, n. 23, above.

Notes for *Dominus Rex v. Joseph Jordan*, [c. September 1761]

This document pertains to the murder trial of Joseph Jordan, stepson of leading Philadelphia Quaker Israel Pemberton. Jordan had long engaged in behavior unsatisfactory to his family, especially excessive drinking. On September 22, 1760, he came to the Pemberton home “very drunk and abusive” while everyone but his stepsister, Sarah Pemberton (1741–1810), was out. She fled the home, and, at the request of family members, Thomas Kirkbride (d. 1760), a relative of Israel Pemberton’s first wife Sarah Kirkbride Pemberton (d. 1746) and friend of Jordan’s, entered the home and followed Jordan upstairs to lock him in his room. The two men struggled, and Jordan stabbed and killed Kirkbride.¹

In this case, the plaintiff, *dominus rex*, is the king or the state.² In preparing Jordan’s defense, JD was likely not seeking acquittal from the jury, but rather leniency to avoid the death penalty on grounds of Jordan’s insanity. The discussion here is much broader than the specific details of the case, but it addresses the central issue of intent. The difference between murder and manslaughter, JD’s research into legal precedent revealed, was whether the killer had malicious intent. The intent of the victim also mattered, including whether that person intended peace and whether he made his intentions known. Mathew Hale’s *Historia Placitorum Coronæ*, on which JD relied, significantly, instructed that when determining malice, one had to consider the manner of the killing, the person who was killed, and the person doing the killing.³

In his opening statement, JD prepared the jury, which he might have assumed was unsympathetic, to consider his argument. As preface to his two technical points of law, he constructed a statement that sought to evoke compassion for Jordan and assure them of JD’s own honorable motives in defending a murderer. Moreover, he revealed to the jury that he himself had been a friend of the defendant when they were young and had thus personally witnessed Jordan’s devolution into insanity. Then, he proceeded to his legal argument. The first point JD raised was that Jordan was not of sufficiently sound mind to be capable of committing murder. JD cited the views of legal authorities such as Hale and Coke on the issue of mental capacity. The second point was that Jordan lacked the “malice” required for a homicide to constitute the crime of murder. As he had done with respect to the issue of mental capacity, JD reviewed legal authorities, noting that

they characterized malice as “malice in fact or implied malice.” He argued that in Jordan’s case no malice in fact had been shown. As to implied malice, he noted that only voluntary homicide without provocation was potentially applicable. He also argued that voluntary homicide only created a presumption of malice that could be overcome by proof that a defendant had acted without malice. JD pointed to various facts, including Jordan’s friendship with his victim, his mental problems, his drunkenness, and his pursuit by his victim, that negated the possibility of malice. But JD did not provide a description of the killing, including, for example, the name of Jordan’s victim, the provocation for the killing, or the manner in which it was done.

JD was successful in that Jordan was subsequently declared “a Lunatick” and remanded to the custody of the Pennsylvania Hospital on September 26, 1761, where he was held until his death in 1772.⁴

JD wrote the following set of notes in two places—a single sheet folded into four legal-sized pages, and a separate scrap of paper about one-half of a legal page. It appears he may have begun first on the scrap with a statement to the jury, then continued on the legal-sized pages with the remainder of the statement and the technical arguments. The document is thus ordered accordingly.

There are docketing and notes on the back of the legal-sized pages. As with other documents with such docketing, they appear at the beginning. In this case, it seems clear that it, along with some notes at the end of the document, were written later. It appears that when JD was writing notes on another, unidentified murder case written around a decade later (“Three Questions [on a Murder],” [n.d.], PHi-RRL), he returned to these notes for reference and jotted additional notes. We know these additions were later for two reasons: the ink and script are slightly different from those in the main body of the document; and one of the casebooks he cited Michael Foster’s *Report of Some Proceedings on the Commission of Oyer and Terminer*, which was published on July 12, 1762.⁵ The added portion at the end is identified with an editorial note.

Dominus Rex

v

Joseph Jordan⁶

L^d. Raym. 1296.

Foster 138. 291. 292. 256.

257. 261. 262. 352. 371.⁷

Foster 278.
Kelyng 135.
1 Hale's H.P.C. 456⁸

How woud God [punish
such] [*illegible*]
Law of God—"kill[in]g
[Sudd[en]ly?]"⁹
Suppose the Man [pre]sent
Hum[an] Frailties—One
fatal {Moment}

On the [pre]sent melancholy occasion I have undertaken to assist the unhappy man at the Bar in making his Defence; and as I have not engagd in this Duty with Rashness, under your Favour G[entlemen], I will endeavour to discharge it with Integrity— [&] Candour—

I ~~always~~ have thought, & hope I always shall think that G[entlemen] of our [Pro]fession [o]f our Profession shoud undertake Causes of this Nature with Caution—& for this Reason, that no Maxim of Justice can be more clearly establishd than this— "That wherever one Man maliciously destroys the Life of another the Aggressor by a most just Retaliation shoud suffer in the same Degree—" To spread a Varnish over such black Crimes is a horrid Employ[m]ent

But on the other hand to listen to the Cries of Affliction, & to relieve Distresses owing more to Misfortune than to Guilt, becomes a worthy Man, & therefore cannot be displeasing to You—

Influencd G[entlemen]—by such Sentiments—& movd by the Approb[ati]on of my own Conscience— I now have the Honour of addressing You on behalf of the [&c?] ~~Wh[illegible] [illegible] & (Vide next page)~~ {You now stand vested with an Author[ity] &c This being the Nature of your Consid[erati]ons &c Vide next page}

Order

1st— Consider the Evidence {Law—}

2^{ly}— The Law {Evidence—}

3^{ly}— Apply the Law to the Evidence & conclude [*page break*]

~~When a good & prudent Man is going to undertake a Matter of [torn] Importance—he prepares his Mind by summon[ing] all the Faculties of Reason, & banishing every Suggestion of Passion— How much more necessary is such Caution upon an Occasion of so much Conseq[ue]nce as the pres[en]t You are not now to consider Whether a little piece of Ground belongs to one Man or another [torn] are not now to determine— Whe{a}ther Punishm[en]t shall be inflicted [torn] a Prisoner for the [Per]son You are trying shall be find or impris[on]ed~~

~~But You by your Verdict are to decide this solemn P[torn] Whether the{an} Unhappy Man {Fellow} Creature is to continue {longer} among the human Race—or to be cutt off from the Land of the Living, & by the most ignominious of all Deaths, rankd with Criminals, and numbered with the dead—~~

This being the Nature of your pres[en]t Consid[erati]ons, I am [per]swaded You will use all the Methods in your Power to discharge the Trust now reposd in You by the Laws of your Country— That You will in the most calm & unprejudicd {sacred} Manner enquire into the Truths & th[at] your Lips will utter a Sentence dictated by feeling and unprejudicd Hearts—

Encouragd by this Reflection, I will beg leave to offer to your Consideration {cannot} forbear flattering Myself that You will be pleasd to attend even to such Obs[er]vati]ons as it may be in my Power to lay before You on this melancholy Occasion— [page break]

[on legal-sized pages:]

Of all Causes, there is none in wh[ic]h I shoud so unwill[ing]ly engage, as in a Cause of this Nature—& my Reason is—that no Maxim of Justice or Mor[a]l[i]ty is more clearly establishd in my Mind than this—that wherever one Man maliciously destroys the Life of ano[the]r by the most just Retaliation—the Aggr[ess]or shoud be deprivd {suffer} of {[in?]} the same Blessing {Degree=} {& therefore the utmost Caution shoud be usd in extenuat[ing] a doubtful Offence.} These are my Principles—& I hope my Conduct will be ever regulated by them— God forbid that the ~~Desire of Gain~~ {pursuits of my [Prof]ession} shoud ever tempt Me to disguise the blackest Crimes— or {to} endeavour to prevent the Punishment due to their Guilt— As I never have—so I never will receive the least Reward for appear[ing]

September 1761

on such an Occasion as this—That I may ever preserve those two invaluable Blessings—the approbation of my own Conscience & a Character unspotted with the sordid Love of ~~Lucre~~ {Gain—}—

Such G[entle]men are my Sentiments—& such I am satisfyd You ~~think~~ {imagine} they ought to be— But at the same Time I cannot but believe—that You will not think it unworthy of a Man to listen to the Cries of Distress—or to wipe away the Tears of Affliction—if it can be done with an innocent Hand—

Influencd G[entle]men, by these Motives only—I now address You— ~~{()I recollect G[entle]men the unhappy [illegible] [the features of?] [illegible] fellow for whom I had a great Respect in our younger Years()}~~ The Misfortune {deep Calamities} of a worthy Family for which I have the greatest Esteem {their Request that I wo[ul]d conscientiously consider the Affair—& the unhappy Cond[it]ion of the Prisoner &c with whom I was acquainted as a Schoolfellow in our younger Years— I confess have excited my Comp[assi]on in the highest Degree—& I have some Reasons to hope Given that when You are informd of all the Circumstances that have been laid before Me—You will think Me excusable for the Trouble I now give You— {But while I render to him the little Services in my Power—I do not intend to misrepresent {facts}—or deceive by artful Argum[en]ts.}

It is certain that an amiable Youth has in a dreadful & violent Manner been destroyd—& those who knew & lament the Loss of his Virtues, can receive no Consolation but from reflect[in]g that those very Virtues—now [intitle] {raise} him to that Bliss wh[ic]h they seem to have merited. [*page break*]

{Perhaps} While I excuse the Violence that ~~executed~~{raisd} ag[ains]t him—I ~~mean not to deprive~~ {It is no unbecom[in]g Office in Me to pay to} his Memory of the Praises it deserves— May he be rememberd— While he is remembred—with Affection & Sorrow.

Nor am I apprehensive G[entle]men that my acknowledged[gin]g his Worth will excite any Resentm[en]t in your Breasts ag[ains]t the Prisoner at the Barr— But so far from it that when You understand the Friendship that subsisted between them—& the ~~Injury~~ Hurt that unfortunate Man's Understand[in]g has rec[eive]d—You will think even him excusable—if not entitled to Pity.

No Intention to byass You—but to [pre]sent a series of Facts candidly related—th[at] You may determine whether this Fact was committed with such ~~aggravated Wickedness~~ extenuat[in]g Circumst[ance]s as to exempt the Prisoner from Death—or

with such deliberate & malicious Wickedn[ess] that this Tragedy must finish with the Fate of this poor Wretch scarce sensible of the many Miseries that surround him.

[*in left margin:*] {[Com?]}¹⁰

Only presumption ag[ainst]t Us—but positive [Pro]of for Us—}

A [pro]mis[in]g Child—belovd by all his Acquaintance—the {then} only Son & fond Expectation of an excellent & fond Mother¹¹—distinguishd by Genius & Application—At once a deplorable Alter[at]ion— His Strength witherd{s}— His Faculties decay— His Nature changes— From strong he becomes weak—from Sensible—he becomes stupid—from lively he becomes dull— All the Traces of Learn[in]g are obliterated by the dreadful Disease that seizes him, from his Mind—like Marks on the Seashore Sand, by the Wave that washes them away. We shall attend

[*several blank lines*] [*page break*]

2 Points: 1.st Whether the P[riso]ner was of such sound Mind—as to make him Crim[ina]l in Law—

2.^{ly} Whether the P[riso]ner had that Malice in his Mind—at the Time &c wh[ich] the Law requires to constitute the Crime of Murder—

On each of these Heads— Consider what the Law means by the Terms usd—& then apply the Testim[on]y to the Definit[i]ons given.

My L[or]d Coke calls a man non comp[os] &c¹² one “Qui patitur Exilium Mentis”—¹³ 3 Ins. 4. 1 Ins. 247—b— “Sine mente.”¹⁴

Hale more [par][ticu]lar— First he divides Madness into—Idiocy—or natural & accidental or adventitious—this last into “partial” & “total”—by “partial” he means in respect to some [par][ticu]lar Subject—or the Degree of Madness—this partial Insanity does not of itself excuse— But he again divides **accid[enta]l Madness** whether total or partial—into fixd or periodical— The first is calld Frenzy—the latter Lunacy—from the Influence of the Moon—especially ab[ou]t the full & change & the Equinoxes.

& Crimes committed by them are consid[ere]d accord[in]g to the Measure of their Distemper—¹⁵

The Rule laid down by Hale is—pa. 30—th[at] he is Criminal if he hath not as much Understand[ing] as a boy of 14—¹⁶ This seems to be Coke's Opin[i]on—1 Ins. 247.

As to Drunkenness &c Hale—pa. 32.¹⁷

All the Author[it]ies th[at] mention Drunk[enne]ss being no Excuse—relate to the Drunk[enne]ss of a man of sound Mind.

Diff[icult] as Hale says to determine the Line between total & partial Insanity But I shoud call t{T}his a total ~~illegible words~~ Denomination of Madness {seems to be total as to subjects tho[ugh] not in the Degree except at certain Times—wh[ic]h seems to denominate a period[ic]al Madn[ess]}

My Reason for call[ing] it total with Regards to Subj[ec]ts is—that after the Decay of his Underst[an]d[ing]—there appeared a total Revol[uti]on in his Mind—& Conduct— All knowl[edge] was lost—all Prudence neglected—

Here repeat the Testimony to this [Pur]pose

It is provd to be period[ic]al by Capt[ai]n Robinson—& this Accid[en]t happ[ene]d at the Full of the Moon & the Equinox—

In vain to enquire into the Causes of these Natural Misteries

We are to submit to the settled Laws & f[ir]st? Pleasure of Providence still remembr[ing] to treat with Tenderness the Objects, by whose Misfortunes We are warn'd to ~~appeal to~~ {apply to} his infinite Goodness for [Pro]tection [*page break*]

[*in left margin:*] {1st— Diff[erence] in our Favour between our Case & the more fav[ora]ble Case quoted to the accusd—is that in none of them app[ea]rs to have been a [Per]son of a disord[er]d Mind—& known to be so by the [Per]son killd—

2.^{ly} In none of them—the [Per]son killd pursued the other as here—

3.^{ly} Sev[era]ll strokes given—here one}

2.^d Point. Whether there app[ea]rs such **Malice** as the Law requires to constitute {Murder—}

Sedato animo—3 Ins.¹⁸ Kel. 127—a design formd of doing Misch[jief]¹⁹ The Mean[ing] of the Word best determind from Cases adjudged.

Hale 51–57—it must be deliberate²⁰—12 Mod. 632²¹—Kel. 116. {the Mind must be perversely wicked says Hawk. 80—& the [Per]son Master of his Temper at the Time idem 81.}²²

No Malice in Fact [pro]vd or insinuated—

Only Malice in Law or implyd Malice

The Diff[erence] between the 2 kinds of Malice— Malice in fact—
Hale's P.C. 451.

Implied Malice of 3 kinds— 1—When Homicide is vol[un]tarily
committed w[ith]out [pro]vocation— 2 ~~When~~— In Respect of the
[Per]son killd— 3—In Respect of the [Per]son killing—²³

Ours must come under the first if any— The 2.^d kind is—when a
Minister of Justice as a Bailiff Constable &c is killd in the Ex[ecution]
of his office— The 3.^d kind is—when the [Per]son kill[ing] intends a
Theft or Burglary &c Hale's P.C. 455.²⁴

Implied Malice is collected from the Manner of doing the Ac-
tion—L.^d. Raym. 1488²⁵—or from the Nature of the Action as Kel.
Expresses—126—²⁶

I will grant that vol[un]tary Homicide w[ith]out [Pro]vocation im-
plies Malice in Law— But this is only an Implic[ati]on or Presumption
of Law wh[ich] only holds till the contrary be [pro]vd for it is absurd
to say th[at] a Presumption shall continue ag[ain]st direct [Pro]of—
{This only to put the [Par]ty upon his Defences Hawk. 89.}²⁷

We [pro]ve that the Pr[iso]ner had no Malice—but had the greatest Af-
fection for him— The Lad's own Acknowl[e]d[gmen]ts—wh[ich] cou'd
[pro]ceed from noth[ing] but an Intercourse of friendly affectionate
Offices.

{Agreeable to the Maxim—} We find the slightest Reasons allowd
for remov[ing] that Presumption— “As if the Name of the Bailiff
P[la]intiff or Def[endan]t be interlin'd after seal[ing] the Writ—1 Hale's
P.C. 457²⁸—or if the Sh[er]iff of Midd[le]sex follows a Man into
Bucks—& is killd—these Acts are only Manslaughter. tho[ugh] a de-
liberate Intention to kill—

Surely our Friends[hip] equal to these to take off the presump-
tion—

==

I shall ~~first~~ give a Series of Instances—in wh[ich] small
[Pro]voc[ati]ons have allowd to extenuate the Fact to Manslaughter—
& tho[ugh] it may be contended th[at] Malice is always presumd from
the Nature of the Weapon—struck with—Yet I shall make it most ev-
ident—that **that** Rule never did hold—in Cases where that
[Pre]sumption was removd by positive [Pro]ofs of Friendship—but
on the Contrary that Cases have been adjudgd directly ag[ain]st it—

==

The least Restraint even of a Stranger's Lib[ert]y—a suff[icien]t [Pro]voc[ati]on L^d. Raym. 130[1]. Kel. 59.—²⁹ A Justle³⁰ makes Mansl[aughte]r 1 Hale's [*page break*] 455—³¹ A {ny} Stroke suff[icien]t [Pro]voc[ati]on—1 Barn. 302— Even strik[in]g a Horse—ib[idem]— So Hale's P.C. 456. {457—Case of Strik[in]g with a Broomstick Hawk. 81. 82—of fight[in]g but suffer[in]g the other to draw—or going into the Field} Vent. 216—Goffe's Case—Gray's Case Kel 64—a strong Case th[at] the Law in this implyd Malice goes beyond the Rules of good Conscience—be[in]g pardond—{tho[ugh] the Barr a dreadful Weapon} ~~2 Cro.~~ Royley's Case—who run a Mile & killd a Lad—only Manslaughter—³² No Malice being found [pro]vd— ~~So~~ 12 C[o] 87.³³

Kill[in]g with a Bowl—only Manslaughter—being Friend Comb. 407—³⁴ 12 Co. 87—Even by a Friend. Clement & Blunt—2 Roll. Rep. 460—12 Mod. 631–632 [Es-teautem?] Familiarity (says Roll—³⁵

H.H.P.C. {464.}³⁶ Jury woud not convict all that were [pre]sent because their assent not “satisf[act]orily [pro]vd— {To make the others g[uil]ty—it must appear th[at] they were acting combind “in [pro]secution of some unlawful [Pur]pose— Foster 352. 353.}

So Gray pardond, tho[ugh] he str[uc]k on Words only with an Iron Barr—Kel. 64. 65.³⁷

Foster 138. Here the [Per]sons were hurt themselves id. 278. Nailor's Case who killd his Brother

AD (PHi-RRL)

¹ See *LLP*, 3:1000, 1013–14.

² Dominus rex: “In feudal and ecclesiastical law. A lord, or feudal superior. Dominus rex, the lord the king; the king's title as lord paramount” (*BLD*). In Britain during the 18th cent., lawyers, and in a few contexts government officials, were involved in criminal prosecution and defense, despite the default expectation that there would be no lawyer on either side. In Pennsylvania, however, it was unusual for defendants not to have a lawyer. See John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003); Jack Marietta and G.S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682–1800* (Philadelphia: University of Pennsylvania Press, 2006), 61.

³ See 1 Hale, *Pleas* 451.

⁴ See *LLP*, 3:1013–14.

⁵ *Gazetteer and London Daily Advertiser*, July 10, 1762.

⁶ Joseph Jordan (c. 1735–1772) was the son of Mary Stanbury Hill Jordan (see n. 10, below) and Robert Jordan (d. 1741), a Quaker minister from Virginia.

⁷ 2 Raymond, *Cases* 1296–1302, *The Queen v. Tooley et alios*, Mich. 8 Ann. (1709). The defendants intervened in the unlawful arrest of one Anne Dekins, killing the arresting constable in the process. The court ruled that the defendants had a right to resist unlawful arrest, and the charge was reduced from murder to manslaughter.

Foster 138: “*The Case of* RICHARD CURTIS,” who was “Indicted at the Summer Assizes 1756 for the Town and County of *Newcastle upon Tyne*, for the Murder of *William Atkinson*” (135). Curtis had helped Charles Cowling escape arrest, and when the serjeants returned with a warrant, Curtis vowed he would kill the first man through the door, which he did with an ax blow to the side of Atkinson’s head. The court ruled this was “undoubtedly Murder; as flowing from a wicked Heart, a Mind grievously depraved, and acting from motives highly Criminal.”

Foster 291: “And it ought to be remembered, that in all other Cases of Homicide upon slight Provocation, if it may be reasonably collected from the Weapon made use of, or from any other Circumstance, that the Party intended to Kill, or do some great bodily Harm, such Homicide will be Murder. The Mischief done is irreparable, and the Outrage is considered as flowing from brutal Rage or diabolical Malignity than from Human Frailty.”

Foster 292: “A Parker found a Boy stealing Wood in his Master’s Ground, He bound him to his Horse’s Tail and beat Him. The Horse took a Fright and ran away, and dragged the Boy on the Ground so that he Died. This was held to be Murder. For it was a deliberate Act and favoured of Cruelty.”

Foster 256: “When the Law maketh use of the Term *Malice aforethought* as descriptive of the Crime of Murder, it is not to be understood in that Narrow Restrained Sense to which the Modern Use of the Word *Malice* is apt to lead one, a *Principle of Malevolence to Particulars*. For the Law by the Term *Malice* in this instance meaneth that the Fact hath been attended with such Circumstances as are the ordinary Symptoms of a Wicked, Depraved, Malignant Spirit.”

Foster 257: “The Legislature hath likewise frequently used the Terms *Malice* and *Malitiously* in the same general Sense, as denoting a Wicked, Perverse, and Incorrigible Disposition.... AND I believe Most, if not All the Cases which in our Books are ranged under the Head of *Implied Malice* will, if carefully adverted to, be found to turn upon this single Point, that the Fact hath been attended with such Circumstances as carry in them the plain Indications of an Heart regardless of Social Duty and fatally bent on Mischief.”

Foster 261: “If an Action unlawful in itself be done Deliberately and with Intention of Mischief ... it will be Murder. But if such mischievous Intention doth not appear ... it will be Manslaughter.”

Foster 262: “[W]here the Injury Intended against *A*. proceeded from a Wicked, Murderous, or Mischievous Motive, the Party is answerable for All the Consequences of the Action, if Death ensueth from it, though it had not it’s Effect upon the Person whom He intended to destroy. The *Malitia* I have already explained ... is just the same in the One Case as in the Other.”

Foster 351–52: “I have by way of Caution supposed that the Murder was Committed in *Prosecution of some Unlawful Purpose*.... For unless This shall appear though the Person giving the mortal Blow may Himself be Guilty of Murder, (He may possibly have conceived Malice against the Deceased and taken the Opportunity which the Confusion of a Croud or Darkness of the Night afford to execute his private Revenge) He, I say, may be Guilty of Murder.”

Foster 371: “He [Saunders] with Intention to destroy his Wife, by the Advice of one *Archer* mixed Poison in a roasted Apple, and gave it to Her to eat. She having

eaten a small Part of it gave the Remainder to their Child. *Saunders* at this dreadful Moment made a faint Attempt to have saved the Child; but conscious of the horrid Purpose of his own Heart, and unwilling to make his Wife a Witness of it, desisted; and stood by and saw the Infant He dearly loved eat the Poison, of which it soon afterwards Died. It was Ruled without much Difficulty that *Saunders* was Guilty of the Murder of the Child.”

⁸ This docketing and the notes, as well as the notes at the bottom of this document were written later, as JD was writing notes for another case after 1762. See “Three Questions [on a Murder],” [n.d.], PHI-RRL.

Foster 278: “The Prisoner [Nailor] was Indicted for the Murder of his Brother.... The Prisoner on the Night the Fact was committed came Home drunk. His Father ordered Him to go to Bed, which He refused to do; whereupon a Scuffle happened betwixt the Father and Son. The Deceased ... got up, and fell upon the Prisoner, threw Him down, and beat Him.... And as They were so striving together the Prisoner gave the Deceased a Wound with a Penknife: of which Wound He died.... [I]t was Unanimously held to be Manslaughter.”

Kelyng 135 reports on *Regina v. Mawgridge*, Hill. 5 Ann., B.R. (1706). Mawgridge assaulted William Cope, a lieutenant of the Queen’s Guards, in the heat of an argument with his sword, stabbing him near the left nipple and killing him. The chief justice argued in the court’s opinion that, “[i]f one Man upon angry words shall make an Assault upon another ... and he that is so assaulted shall draw his Sword, and immediately run the other through, that is but Manslaughter.”

1 Hale, *Pleas* 456: “And many, who were of opinion, that bare words of slighting, disdain, or contumely, would not themselves make such a provocation, as to lessen the crime into manslaughter, yet were of this opinion, that if *A.* gives indecent language to *B.* and *B.* thereupon strikes *A.* but not mortally, and then *A.* strikes *B.* again, and then *B.* kills *A.* that this is but manslaughter, for the second stroke made a new provocation.”

⁹ Possibly a reference to the Mawgridge case, which Kelyng listed in the index under “Murder to kill one suddenly without cause.”

¹⁰ Perhaps “[Conc?]” or “[Cond?]”

¹¹ Mary Stanbury Hill Jordan Pemberton (c. 1704–1778) married Israel Pemberton in 1747. See *LLP*, 3:1000.

¹² Lat. of unsound mind. The complete phrase is “non compos mentis.”

¹³ Lat. one who suffers a loss of mind.

¹⁴ 3 Coke, *Institutes* 4: “A Man that is *non compos mentis* ... or an Infant within the age of discretion is not (*un home*) within this Statute; for the principall end of punishment is, That others by his example may feare to offend.... If a man commit Treason or Felony and confesseth the same, or be thereof otherwise convict, if afterward he become *De non sane memorie* [Lat. of unsound memory] (*qui patitur exilium mentis*) he shall not be called to answer.”

1 Coke, *Institutes* 247 b.: “[I]n Criminal causes, as felony, &c. the act and wrong of a mad man shall not be imputed to him, for that in those causes, *Actus non facit reum, nisi mens sit rea* [Lat. An act does not make a person guilty, unless the mind is guilty]; and he is *Amens (id est) sine mente* [Lat. insane (that is) without his mind], without his mind or discretion.”

¹⁵ 1 Hale, *Pleas* 29–37, is a chapter titled “Concerning the defect of ideocy, madness and lunacy, in reference to criminal offenses and punishments.”

¹⁶ 1 Hale, *Pleas* 30: “[I]t is very difficult to define the indivisible line that divides perfect and partial insanity ... the best measure that I can think of is this; such a person as labouring under melancholy distempers hath yet ordinarily great understanding, as

ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony.”

¹⁷ 1 Hale, *Pleas* 32: “The third sort of *dementia*, is that, which is *dementia affectata*, namely *drunkenness*: This vice doth deprive men of the use of reason, and puts many men into a perfect, but temporary phrenzy; and therefore, according to some Civilians, such a person committing *homicide* shall not be punished simply for the crime of homicide, but shall suffer for his drunkenness answerable to the nature of the crime occasioned thereby.”

¹⁸ 3 Coke, *Institutes* 51: “First let us see what this malice is. Malice prepensed is, when one compasseth to kill, wound, or beat another, & doth it *sedato animo* [Lat. with settled purpose]. This is said in law to be malice forethought, prepensed, *malitia praecogitata*.”

¹⁹ Kelyng 127: “Malice is a design formed of doing mischief to another.”

²⁰ 1 Hale, *Pleas* 451–57 includes c. 36, entitled, “*Touching murder, what it is, and the kinds thereof*,” and c. 37, entitled, “*Concerning murder by malice implied presumptive, or malice in law*.” Hale writes: “Malice in fact is a deliberate intention of doing any bodily harm to another, whereunto by law he is not authorized” (451).

²¹ 12 *Modern* 632, *Rex v. Plummer*, Hill. 13 Will. 3, B.R. (1701): “the unlawful act ... was a sudden one, and without deliberation.”

²² 1 Hawkins 80: “[I]t is to be observed, That any formed Design of doing Mischief may be called Malice; and therefore that not such Killing only as proceeds from premeditated Hatred or Revenge against the Person killed, but also in many other Cases, such as is accompanied with those Circumstances that shew the Heart to be perversly wicked, is adjudged to be of Malice prepense [i.e., aforethought], and consequently Murder.”

1 Hawkins 81: “And where-ever it appears from the whole Circumstances of the Case, That he who kills another on a sudden Quarrel, was Master of his Temper at the Time, he is guilty of Murder.”

²³ 1 Hale, *Pleas* 451: “Malice in law, or presumed malice, is of several kinds, viz. 1. In respect of the manner of the homicide, when without provocation. 2. In respect of the person kild, viz. a minister of justice in execution of his office. 3. In respect of the person killing.”

²⁴ 1 Hale, *Pleas* 455: “I Have before distinguished malice implied into these kinds: 1. When the homicide is voluntarily committed without provocation. 2. When done upon an officer or minister of justice. 3. When done by a person, that intends a theft or burglary, &c.”

²⁵ 2 Raymond, *Cases* 1488, *The King v. Oneby*, Trin. 13 Geo. 1 & 1 Geo. 2 (1727), a case of the murder of William Gower during a brawl between friends at a tavern in St. Martin-in-the-Fields parish. Key to the case was determining if Oneby acted with malice: “This malice, an essential ingredient to make the killing a person murder (to use the expressions of lord chief justice *Coke* and chief justice *Hale*, whose authority hath established them) must be either implied or express; and says *Hale* in his *Pleas of the Crown* 44. this implied malice is collected, either from the manner of doing, or from the person slain, or the person killing.” Oneby was found guilty, and killed himself by slicing the artery in his arm with a razor the night before his scheduled execution.

²⁶ Kelyng 126, *Regina v. Mawgridge*, Hill. 5 Ann., B.R. (1706): “Here is express Malice, that appears by the nature of the Action.”

²⁷ It is unclear to what JD is referring. 1 Hawkins 89 deals with simple larceny, but JD is possibly referring to 1 Hawkins 76–77, a chapter entitled, “*Of Manslaughter*.”

²⁸ 1 Hale, *Pleas* 457: “If the sheriff’s bailiff comes to execute a process, but hath not a lawful warrant, as if the name of the bailiff, plaintiff, or defendant be interlined and

inserted after the sealing thereof by the bailiff himself, or any other, if such bailiff be kild, it is but manslaughter, and not murder.”

²⁹ Specifically, 2 Raymond, *Cases* 1301.

Kelyng 59–62, “Hopkin Huggett’s Case” (1666). The court held that “[i]f such People who are called Spirits [abductors] take up a Youth, or other Person to carry him away, and thereupon there is a Tumult raised, and several Persons run in, and there is a man killed in the Fray, this is but Manslaughter: for there is an open affray, and actual force, which is a suddain provocation, and so that death which ensueth is but manslaughter” (62).

³⁰ That is, jostle.

³¹ 1 Hale, *Pleas* 455–56: “If *A.* be passing the street, and *B.* meeting him, (there being convenient distance between *A.* and the wall,) takes the wall of *A.* and thereupon *A.* kills him, this is murder; but if *B.* had justled *A.* this justling had been a provocation; and would have made it manslaughter.”

³² 1 Barnardiston, K.B. 302, *Rex v. How*, Hill. 3 Geo. 2, B.R. (1729): “In an Indictment for Murder it was laid down by the Court as a Principle of Law, that wherever a Man strikes another without Authority, and upon that the other kills him, such Offence in only Manslaughter. And the Court said, that this has been carried so far, as to be but Manslaughter, even where a Man’s horse is only struck first. Upon this Rule of Law the Court accordingly directed the Jury to acquit the Defendant of Murder.”

1 Hale, *Pleas* 456: “There was a special verdict found at *Newgate*, viz. *A.* sitting drinking in an alehouse, *B.* a woman called him a *son of a whore*, *A.* takes up a broom-staff, and at a distance throws it at her, which hitting her upon the head kild her, whether this were murder or manslaughter was the question in *P. 26 Car. 2.*” The judges could not come to a decision and so “it was advised the king should be moved to pardon him, which was accordingly done” (457).

1 Hawkins 81–82: “But it is said, That if he who draws upon another in a sudden Quarrel, make no Pass at him till his Sword is drawn, and then fight with him, and kill him, he is guilty of Manslaughter only, because that by neglecting the Opportunity of killing the other before he was on his Guard, and in a Condition to defend himself, with the like Hazard to both, he shew’d that his Intent was not so much to kill, as to combat with the other.”

1 Ventris 216, “Goffe’s Case,” Trin. 24 Car. 2, B.R. (1672). Goffe, a collector of the king’s duty of chimney money, entered a house with a constable to collect the tax. No one was home except the servant, who had no money, so Goffe took a silver cup as payment. When the servant tried to prevent him from leaving, he beat her head multiple times against the door post. She died of her wounds three weeks later. The court’s opinion was “[t]hat this was but homicide, and directed the Jury to find it so.”

Kelyng 64, “Grey’s Case,” 18 Car. 2 (1666). John Grey, a blacksmith, struck his servant with an iron bar following insolent words.

2 Croke 296, “John Royley’s Case,” Hill. 9 Jac. 1, (1611): Royley was indicted for the murder of William Derman. William Royley, his son, was fighting in a field with Derman, who gave him a bloody nose. When William complained to his father, John went to the field, verbally assaulted Derman, and hit him with a small club. Derman later died of his wounds. The court ruled that Royley was provoked by his son’s assault and was guilty only of manslaughter.

³³ 12 Coke, *Reports* 87 reports on an unnamed case of manslaughter, Trin. 9 Jac. 1 (1611): “Divers Men playing at Bowls at *Great Marlow* in the County of *Kent*, two of them fell out, and quarrelled the one with another, and the third Man who had not any Quarrel, in Revenge of his Friend, struck the other with a Bowl, of which Blow he died; this was held Manslaughter; for this, that it happen’d upon a sudden Motion in Revenge of his Friend.”

³⁴ Comberbach 407: “*Barker and Newberry* being friends were at Bowls, the one killed the other with a Bowl upon fervent Words, and held by Manslaughter. Here the design to discharge him shews no Malice, they might part Friends.”

³⁵ 2 Rolle 460, *Jane Clement v. Charles Blunt*, Pasch. 22 Jac. 1, B.R. (1624). It is unclear exactly to what JD is referring because Rolle’s report does not mention familiarity. JD cites a summary of the case from another case in *Modern*, below.

12 *Modern* 631–32, *Rex v. Plummer*: “In an Appeal of Murder by *Clement* against *Blunt*, the Case was, *A.* and *B.* quarrel about a Dog, which *A.* had promised to *B.* but after refused to give him; upon which *B.* goes home for his Sword, and comes back to the Place where *A.* was, and understanding that he was gone home, he follows him home, and demands the Dog, and would come into his House to search for the Dog, and *A.* refused him Entrance, and the other presses in, and being opposed, in the Scuffle kills *A.* and it was held here at the Bar to be only Manslaughter; yet *B.* was doing an unlawful Act, viz. entering a Man’s House against his Will, and *A.* was killed in pursuance of such unlawful Act; and the only Reason of that Resolution must be, because the unlawful Act in which *B.* was concern’d, was a sudden one, and without Deliberation.” See also n. 19, above.

It is unclear what JD means here. *Este autem* translates to “this, however” and JD could be referring to a contrary opinion or source.

³⁶ 1 Hale, *Pleas* 464: “[T]he jury found nine of them guilty, and acquitted those within, not because they were absent, but because there was no clear evidence, that they consented to the assault.”

³⁷ Foster 351: “But if a Fact amounting to Murder should be committed in Prosecution of some Unlawful Purpose, *though it were but a bare Trespass* ... [t]his would have amounted to Murder in Him, and in every Person present and joining with Him.”

37

To Jacob Cooper, October 12, 1761

Sir,¹

As I am setting out for New Castle, and shall not be in Town till towards the End of the Week, I return the Papers left with Me, & my Opinion upon the Title— Francis Gamble’s surviving Frettwell & Thorp,² Benjamin Kirton’s surviving Haddon,³ & William Kirton’s⁴ being the Cousin & Heir of Benjamin, are Facts that ought to be establishd on a Trial; but as You say they can be provd, I look on them as granted—

I think an Objection might be made to the Conveyance from William Kirton to Hyam & the other Trustees,⁵ if Benjamin Kirton left any other Children, that they ought all to have joint in the Deed; for I take it, that {even} Trust Estates descend exactly in the same Manner as Legal Estates do; but here the legal Estate was in Benjamin Kirton only subject to a Trust, & on his dying Intestate descends to all his Children by the Laws of the Lower Counties, allowing two shares to the eldest Son—

October 1761

However as this Objection is a mere Nicety of Law without Reason or Justice in it, as Trustees are only Instruments to convey the Estate to those for whom it was created, I have drawn my Opinion in such a manner as will be most likely to prevent unjust Law Suits—

Another Objection may be made to some of the Deeds which have never been provd or recorded; but I dont apprehend this to be a good Objection, because the Law allows antient Deeds to be read without any proof of their Execution, especially if possession has attended them—

I do not think your Power of Attorney properly provd; for the Laws of the Lower Counties expressly require Powers of Attorney provd abroad, to be provd by two of the Witnesses before the Mayor or Chief Magestrate of the Town, who certifies it— However, if any of the Witnesses is in America, & coud appear in some Court in the Lower Counties to prove it, this woud be sufficient—

I have taken Notice of Heather's Tract being reconveyd to Gamble, because I have seen the Deeds—⁶

Please to make Use of this Opinion with Caution as to Draper's Tract,⁷ till You are assured of his Deed's being recorded, and You will oblige

Sir,
Your very h[um]ble Serv[an]t
John Dickinson
Philadelphia
October 12th 1761

ALS (PHi-Logan)

¹ Philadelphia merchant Jacob Cooper (1723–1786) was one of the managers of the Pennsylvania Land Company of London. As a land developer and proprietor of Cooper's Ferry between New Jersey and Philadelphia, he founded the town of Camden in the early 1770s. Cooper and Francis Rawle, another attorney for the company, had advertised sales of company lands for October and November, but some of the titles had been disputed. An additional sale of company lands took place in July 1762. See *PG*, April 23, Sept. 10, 1761, June 3, 1762.

² Barbados Quakers Francis Gamble (d. 1728), a mason; Ralph Fretwell (d. 1701), a sugar planter and judge; and Robert Thorpe (died by 1718) were partners in the Barbados Company, which made substantial land purchases in Pennsylvania in the mid-1680s, many of them in what is now Kent Co., Del. Many of these tracts were later acquired by the Pennsylvania Land Company.

³ John Haddon (1653–1724), a blacksmith of Rotherhithe, Surrey Co., England, and Benjamin Kirton, a London merchant, were investors in the Pennsylvania Land Company. In 1720 they purchased tracts in Kent Co. that had been originally acquired by the Barbados Land Company from Quaker minister and politician Thomas Story (c. 1670–1742), who served as the Pennsylvania Land Company's treasurer.

⁴ William Kirton was a watchmaker of Highgate, Middlesex Co., England.

⁵ Thomas Hyam was one of the surviving trustees of the Pennsylvania Land Company. By a deed of Jan. 30, 1750, Kirton conveyed tracts to Hyam and three other men associated with the land company; the tracts were in Kent Co., Chester Co., Bucks Co., Philadelphia Co., and Philadelphia (Delaware Land Records, Roll No. 781, De-Ar).

⁶ In 1686, Thomas Heather (Heatherd, Hewthat; 1638–1695), of Kent Co., was granted 600 acres on the south side of Murder Creek. The land was later acquired by Gamble and sold to Story.

⁷ Alexander Draper (1630–1691) represented Sussex Co. in the Assembly in 1682 and 1683. In October 1686, he was granted a 1,000-acre tract, known as Drapers Berry, in Mispillion Hundred, Kent Co. According to Gamble's Aug. 3, 1714, deed to Story, Draper had sold the tract to Gamble and Thorpe.

38

From John Jones, November 23, 1761

Dear Dickinson,

Agreeable to my promise I enclose you by my brother¹ the medical essays² upon the hooping cough & hunger³ which I wou'd advise you to read after a long contraction of your risible muscles over Cook upon Littleton.⁴

I have not been able to procure the other poem & am afraid it is consign'd to oblivion, which will be an irreparable loss to the republick of letters, & the poetic fame of NewYork in particular, unless some happy genius shou'd start up & astonish the world with an equally sublime production, which I dont entirely despair of, as our seat of the muses makes (without vanity) the most singular figure in America.

As all the pleasures of reflection seem to arise from some former lively impressions I am still agreeably sensible of those I felt at Philadelphia, & cannot help wishing it was in my power to have them repeated more frequently. but as it is determin'd that in this best of possible worlds you shou'd live at Philadelphia & I at NewYork we must endeavour to reconcile ourselves to this admirable Philosophy. Wherever I am plac'd you may be assur'd that no situation will alter the sincere esteem with which I am your very affectionate Cousin.

New York 23^d: Nov[embe]r 1761

Jn^o. Jones⁵

P.S. As the enclosed Essay & burlesque⁶ gave much uneasiness to my worthy fr[ien]d M^r Bache, & his brother is in Philad[elphi]a⁷ I wou'd have you very cautious to whom you shew it for fear of giving the least offence.

JJ

ALS (PPL-JDFP)

¹ Jones was referring to either Thomas Jones (1733–1794), a New York City doctor; Evan Jones (1739–1813), who worked for a New York mercantile house and later became US consul to the Spanish government at New Orleans, La.; or James Jones (1742–1798), who became a merchant.

² The enclosures, which were probably unpublished, have not been found.

³ Insatiable hunger was sometimes associated with whooping cough.

⁴ That is, 1 Coke, *Institutes*.

⁵ John Jones (1729–1791), of New York, was born in Jamaica, Long Island, and studied medicine in Philadelphia and Europe, receiving his M.D. from the University of Reims in 1751. He apprenticed with Thomas Cadwalader, and served as a surgeon during the French and Indian War and, beginning in 1767, a professor of surgery at King's College. During the Revolutionary War, he enlisted in the Continental Army as a surgeon. In 1780 he was elected a physician of the Pennsylvania Hospital. By marriage, he and JD were first cousins once removed; JD's great-uncle, John Cadwalader, married Jones's aunt, Martha Jones (1679–1747). Little correspondence remains extant, but Jones and JD had a long friendship. See also Jones, *Plain Concise Practical Remarks on the Treatment of Wounds and Fractures* (New York: J. Holt, 1775).

⁶ Enclosures not found. A popular burlesque reprinted in Boston near the date of this letter was Robert Dodsley's *The Chronicle of the Kings of England* (London: T. Cooper, 1740; Boston: Z. Fowle and S. Draper, 1759).

⁷ Here, Jones was probably referring to Theophylact Bache (Theophilact; 1735–1807), a merchant, and his brother, Richard Bache (c. 1737–1811). Together, they operated a store on Water St. Theophylact later relocated to New York City.

39

Notes for *Manlove v. Prior*, [1761]

In this case, JD represented a “poor Widow” in her attempt to retain ownership of property she had acquired. Her opponent was attempting to use a motion of replevin to regain the property. The court to which the motion to quash the replevin was made determined that the widow had lawful possession of the property in question, but a clerk of the court, apparently John Vining, issued an order for replevin of the property. According to JD, the order was an affront to the court, and, if it stood, would threaten the rights and liberties of the people of the Lower Counties and undermine the rule of law. JD refers to the judges in the plural, indicating that this case was heard by an appellate court or a panel consisting of multiple judges of a trial court. Also, there were always at least two judges of the Superior Court.

Move to quash Replevin¹

Manlove— v Prior—	}	State the Case. Jud[gemen]t for the poor Widow — Ext[ens]ion ² executed once already set aside. { Now a 2. ^d issued by the Re- porting Clerk}
-------------------------	---	--

{Absurd Contrad[icti]on on the face of the Records}

==

Shall use the gentlest Terms because my friend [*illegible*] Extraord[in]ary Conduct.

Thus your Clerk has undertaken to reverse your Jud[gemen]ts and has stopt that Justice wh[ich] You designd to reach my poor Client.

==

If your Worships Author[ity] be sunk down so low & your Clerks grown so high This Court is very diff[eren]t from what I apprehended But it cannot be—& when so violent an attempt is made on your Dignity & Power I am convinced from my Knowl[edge] of the Gentl[eme]n who sit on this Bench of your Spirit & Resolution.

==

Be pleasd to consider the Nature of this Action & its Consequences It is not revoking the Jud[gemen]t of a single Majestrate but of this whole Bench, & by their Servant.

Cases in Strange & 8 Modern Justice may be comp[are]d to a stream By our Const[itut]ion it flows from this Court to the District under its Jurisd[icti]on

If your Decrees are forcibly annulld—
The Adm[inistrati]on is destroyd The
Rights & Liberties of every man in this City
are invaded trampled under feet.

[*vertically in left margin:*] If Oppressive Measures are not opposd by [Per]sons engagd to oppose Where &c Unless some exemplary Measure taken— All things in Confusion— What avails it to have Laws?

The Dignity the Authority of this Court attackd. Where must it end?

Instances of Holt committ[in]g Young Nobleman
Coke committ[in]g Earl of Somerset a Favourite³
Harry the 5th When Prince & Submitted.⁴

Thus the R[e]verence of the Laws preservd.

==

The Jud[gemen]t of this Worth[y] Court is no Jud[gemen]t

==

This Insult is now become publick Dare say Your Worships will think it deserves some Notice for preserv[ing] the Credit of this Court—

Instances from Strange & Modern,
But such as this I never heard of.

==

A more unwelcome Office I could not be engagd in—I am extremely sorry to move ag[ainst] the Clerk &c

But I should be much sorrier if my Conscience should upbraid me for want of doing my Duty to my Client—bec[ause] M^r. Vin[ing] is my friend⁵

==

Your Worships may be assur'd I have well consid[er]ed] this matter & would have found some excuse if I could—but finding the Law so plain my Client so much injurd & the Case of so much Conseq[ue]nce] to the Freemen of this City I thou[gh]t Myself bound by Justice Honour Truth & every Obl[igati]on to address your Worships {on this Occasion}

If my Brother had dard—I would have call'd on him &c

==

If violated Laws & cannot find an Advocate at the Barr Where &c

AD (PHi-Logan)

¹ Replevin was an ancient common-law remedy used to regain possession of personal property unlawfully taken and detained by another person.

² Possibly “Ev[ic]tion.”

³ This refers to the 1615 arrest of Robert Carr, first earl of Somerset (Kerr; c. 1585/86–1645), in connection with the death of Sir Thomas Overbury (c. 1581–1613). See Anthony Weldon, *The Court and Character of King James* (London: R.I., 1650), 61–76, 99–102, 115–21.

⁴ This refers to a perhaps apocryphal account, originally by Robert Redman (d. 1540) in his *Life of Henry V* (c. 1536), of the prince insulting or striking William Gascoigne (c. 1350–1419).

⁵ John Vining was prothonotary and clerk of the peace for Kent Co., Del. He was probably the clerk who issued the replevin order to which JD objected.

1762

40

Receipt from Elizabeth Moland, January 23, 1762

Rec[eive]d January 23.^d 1762 from John Dickinson One hundred & fourteen Pounds & fifteen shillings which he receivd for Books belonging to my Father's Estate & sold by him—¹ In this One hundred & fourteen Pounds 15s are included Six Pounds paid by John Dickinson to Anth[ony] Denormandie² by my Order & five pounds twelve shillings paid by my order to Ed[mon]d Milne³

Elizabeth Moland⁴

DS, in JD's hand (PHi-Logan)

¹ JD was selling John Moland's library for the executors of his estate. Although he recorded paying "Miss Betsey" this amount, his accounts denote £115.14.0 received from sales to William Whitebread, James Smith, Thomas McKean, and George Ross (1730–1779) between September and November 1761. The total also included over £11 for books that JD retained for himself. He continued making such sales until at least 1765 (PHi-Logan).

² Anthony De Normandie sold wines and liquor in Philadelphia at the corner of Church Alley in Third St. He later undertook painting and glazing. See *PG*, April 17, 1760; *Pennsylvania Chronicle*, Feb. 2–9, 1767.

³ Edmond Milne (Edmund; 1724–1822) was a Philadelphia goldsmith and numismatic dealer. He kept a shop on Second St. In 1776 George Washington commissioned Milne to make a silver-hilted sword. See *PG*, Nov. 26, 1761.

⁴ JD composed this document, and Moland signed it.

41

"To be Lett," *The Pennsylvania Gazette*, April 15, 1762

TO BE LETT,

A PLANTATION, in the Northern Liberties, where John Moland, Esq; formerly lived, containing 116 Acres, of which about 30 are Meadow. There is a fine Garden, and good Orchard on the Place. Any Person inclining to rent it, may know the Terms, by applying to John Dickinson, in Philadelphia.¹

¹ On April 28, 1762, JD received £30 from Daniel Beckley "for Rent of Plantation," and on June 5 he received £10 from Thomas Masterman "in part of the Rent of the Plantation till Christmas" (PHi-Logan).

May 1762

42

To John Hall, May 3, 1762

Dear Sir,¹

I have receivd your Letter of the 23.^d of last Month, & tho[ugh] it begins with a Complaint, I do not find Myself provokd to make such a Recrimination as You apprehend—that You write too much—²

Indeed, if I was not a very just Man, who am unwilling to receive Presents of the greatest Value, without making some little Returns—such as are in my Power—I shoud lay hold of your Promise, “to keep writing, till I inform You that I dont care to be pesterd with any more of your Letters” and thus gratify Myself {by my Silence,} in two Things to which I am extremely inclin’d,—to be lazy, & to love You—But I will not take Advantage of your friendly threatenng—& I assure You any Remissness I have been guilty of, has been almost of Necessity—

I think really, that your Patriots have taken deep Draughts of our Politics—³ We left some Dregs in the Cup, that might make another Brewing; but your Gentlemen have gone to the Bottom— We drank a great Deal—but it made Us active— Your Dose was so strong, that You have kept your Beds these six Years, & the Fumes of the Liquor are not yet evaporated— But I beg your Pardon for speaking so freely of these civil Heroes— Their Motives may be commendable— Tho[ugh] I acknowledge their Conduct woud appear as laudable to Me, if they were quite idle—as when they are so busily employd—in doing nothing.

Our Legislators are now assembled, after having adjourn’d in some Discontent on the Governor’s refusing the Supply Bill—⁴ It is yet doubtful, whether any Thing effectual will be done at this Meeting—

A Dispute of another Nature has lately engagd the Attention of our City—In which I am sorry to inform You, that your Province has lost some Credit— At our Races last Week, the Purse of a hundred Pounds was carried away by a Horse calld Britain,⁵ from your famous Pacolet—⁶ However his Friends comfort themselves that he lost the Race by throwing his Rider, & not by Want of Speed or Bottom—⁷ I give You this Intelligence because You tell Me You are not too much of a Lawyer Politician or Philosopher, to neglect attending a Horse Race—

For my Part, I have been a mere Sportsman for some Time past, & can almost hold a Diologue in the Stile of the Turf— But the Courts are beginning—& I must change my Stile— However I think it will be

John Dickinson Writings and Correspondence

proper both for You & Me to remember old Cato's Advice, & mix
Pleasure with Business—& Innocence with Pleasure—⁸ Application &
Fatigue may procure Reputation & Wealth—But destroy Health &
Happiness— Preserve these last, & You will add to the Happiness of
your most affectionate Friend
& very h[um]ble Servant
John Dickinson⁹
Philadelphia
May 3.^d 1762

My Mother & Brother who remember You with great Esteem, desire
their Compliments may be presented to You—
I return You Sterling's Sermon¹⁰ with many Thanks for your Kind-
ness—

ALS (PHi-Dreer)

¹ John Hall (1729–1797), of Annapolis, Md., was an attorney and representative to the Maryland Assembly from St. Mary's Co. He later represented Annapolis and Anne Arundel Co. in the Assembly and the Western Shore in the Senate. He was also elected to the Continental Congress.

² Not found.

³ The Pennsylvania Assembly resisted the lieutenant governor, who guarded the proprietor's interests, repeatedly throughout the French and Indian War over the issue of raising funds for defense. Maryland politics followed a similar trajectory with the restoration of the Calvert family's proprietorship in 1715 following Benedict Calvert's (1679–1715) conversion to Anglicanism. Like the Penns, Frederick Calvert, sixth lord Baltimore, demanded that the proprietary estate be exempt from the taxes needed to raise money for the war. However, in nine sessions beginning in 1757 and ending with the session of March to April 1762, Maryland's Lower House passed a supply bill that would have taxed the incomes of large office-holders and other men with much personal property, as well as taxing all landholdings, including those of the proprietor. Each time the bill was rejected in the Upper House (*Proceedings and Acts of the General Assembly, March 1762–November 1763*, vol. 58, ed. J. Hall Pleasants [Baltimore: Maryland Historical Society, 1941], x–xi). In 1768, JD referenced this dispute when trying to garner support for nonimportation: “you all remember that in the very Height of the late terrible *Indian* War, our Assembly and that of *Maryland* chose rather to let the Country suffer great Inconvenience, than immediately grant Supplies on Terms injurious to the public Priviledges and to Justice.” See JD, “An Address Read at a Meeting of the Merchants,” *PJ*, April 28, 1768.

⁴ Charles Wyndham (1710–1763), second earl of Egremont, successor to William Pitt as secretary of state for the southern department, and Maj. Gen. Jeffery Amherst requested that Pennsylvania raise men and supplies for the campaign of 1762. The Assembly passed a bill on March 19 granting £70,000 for that purpose, which Lt. Gov. James Hamilton rejected. The Assembly adjourned on March 26, but the governor called a special session to begin May 3, though a quorum did not appear until May 5. The Assembly passed a new bill on May 12 granting £23,500, and the governor approved it on May 14. Nonetheless, the Assembly approved and delivered to the

governor a message protesting his disapproval of the earlier bill. See *Votes* (1761), 21–24, 27–41, 44–45, 50–52.

⁵ The horse was True Briton, owned by Anthony Waters, of Staten Island, N.Y. See *New-York Gazette*, Nov. 29, 1762, Jan. 17, 1763; “The Fine Bay Horse True Briton,” (New York, 1763). The *PG*, March 18, 1762, reported that the race was scheduled for April 28.

⁶ Pacolet was owned by Col. William Hopper, of Maryland, a “remarkable Gentleman for Taste in breeding good Horses for Running, Saddle or otherwise.” See *Newport Mercury*, April 10–17, 1769.

⁷ Bottom: “Physical resources, stamina, staying power; substance, strength of character, dependability” (*OED*).

⁸ Marcus Porcius Cato (234–149 BC) was a Roman statesman and writer who advocated rigid self-discipline. JD may have had in mind Cicero’s dialogue *On Old Age*, in which Cato is the chief speaker.

⁹ JD addressed this letter: “To / John Hall Esquire / in / Annapolis.” Hall endorsed it: “[J.] Dickinson / 3^d. May 1762.—” The letter also has notation from Richard Gilmor, Jr. (1774–1848), a Baltimore merchant and collector, which he added after Hall’s endorsement: “(author of “Farmers Letters[]).” Above JD’s address, Gilmor also added: “Given to me by Horatio Ridout Esq^r. of Annapolis in 1833 / R. Gilmor.”

¹⁰ James Sterling, *A Sermon, Preached before His Excellency the Governor of Maryland, and Both Houses of Assembly, at Annapolis, December 13, 1754* (Annapolis: J. Green, 1755).

43

Election Announcement: Representative from Philadelphia County to the Pennsylvania Assembly, *The Pennsylvania Gazette*, May 13, 1762

On Tuesday last¹ came on the Election for a Member of Assembly for this County, in the Room of THOMAS LEECH,² Esq; deceased; when JOHN DICKINSON, Esq; was elected in his Stead.

¹ That is, May 11.

² Thomas Leech (c. 1685–1762), an Anglican merchant who had served twenty-seven terms in the Assembly, died on March 31. He was speaker during the William Smith libel trial (see docs. 1:44–57). See *LLP*, 2:651–54.

44

From Nathaniel Foster, May 22, 1762

May the 22 1762

M^r Dickason Sur I Send To you To Let you know that ~~ben~~ Abraham Bennet¹ ~~m~~ has made up with me To my Satesfaction and Desire you To with Draw the action² before {this} Cort in next month if I

S{h}ould not Come up before these € Lines Comes to you which I
Expect you will Receive by Mr hand³ or my brother and Ð {E}ither
of them will Discharge the Cost of Sute and your Demands and please
To Send me a True bill of the Cost by Either of them if they git to
town Before Me and Not with Standing I Shall Call To See you when
I Come up So please To Stop it before Cort and Let it go no further if
And So Doing you will much oblige your humbel Servent

Nathaniel Foster⁴

ALS (PHi-RRL)

¹ Possibly Abraham Bennet (c. 1735–1804), a landowner from Cape May Co., N.J.

² Possibly related is a list entry, written in a clerk's hand, of JD's "Accounts of Writs to the Prothonotary's Office," (1758–63). At July 23, 1761, is a *capias* case, meaning there was a warrant for the arrest of the defendant, called *Nathan[ie]l Forster v. Abraham Bennet*. It has a check by the entry in the left margin, and a note above in JD's hand: "Cl[er]k rec[eive]d his own Fee" (PHi-Logan).

³ Probably the husband of Esther Foster Hand.

⁴ Possibly Nathaniel Foster, Sr. (Forster; died c. 1769), of Cape May, N.J., or his son of the same name. The elder Foster was probably the man of this name who was a judge in Cape May Co. from 1753 to at least 1767. Nathaniel Foster, Jr. had a brother named Salathiel Foster (see doc. 2:51, n. 3, below).

45

To George Read, June 4, 1762

Dear Sir,

If your Opinion agrees with mine on M^r. Gooding's Affair, please to seal my Letter to him & forward it—

I shoud be extremely unwilling to engage him in a Chancery Suit, if You differ in the least from Me—

I wish You every Blessing—which inded is wishing great Happiness to
your affectionate Friend
& very h[um]ble Servant

John Dickinson¹

Philadelphia

June 4th—1762

ALS (PCarID)

¹ JD addressed this letter: "To / George Read Esquire / in / New Castle."

June 1762

46

To Thomas McKean, June 8, 1762

Dear Sir,

I receivd your Favour by M^r. Boggs, & am very much pleasd with the kind Sentiments You entertain of Me; perhaps the more pleasd, because my Heart tells Me they are not altogether unmerited, & that I shoud suffer a great Deal of Uneasiness, if You thought differently of Me—¹

I shall be very happy, if I can do any Service to Jemmy—² I have written to D^r. Jones³ who has a very good Interest with M^r. Napier⁴— & have procurd several Letters of Recommendation from Friends of that Gentleman here—so that I hope our young Friend will succeed in his Design—

I shall take Care of your Docquett in this Court⁵—but I desire You woud not take too much Care of your Business in New Castle—⁶ If You write with such Application, You will make yourself too weak to receive any Benefit from your Jaunt— Moderation in every Thing is the Source of Happiness— Too much Writing—too much Reading—too much Eating—too much Drinking—too much Exercise—too much Idleness—too much loving—too much Continance—too much of Law—Physic—or Religion—all equally throw Us from the Ballance of real Pleasure— This has been said a thousand Times—always believd—& practicd against— It is still true—

I shall be ready to attend You next Thursday or Friday Week into the Jerseys⁷—& wish I may contribute as much to your Satisfaction—as You will to that of

your affectionate Friend
& very h[um]ble Servant

John Dickinson⁸

Philadelphia

June 8th—1762

ALS (PHi-TMP)

¹ Not found.

² Jemmy, a friend of Philemon Dickinson, was James Mease (d. 1785). Mease was a Philadelphia merchant. He served as clothier general to the Continental Army from 1777 to 1779.

³ Dr. John Jones, JD's cousin.

⁴ Possibly James Napier (c. 1711–1799), director and inspector general of hospitals in North America. He returned to London within two years but became superintendent of hospitals for North America during the Revolutionary War.

⁵ Most likely the Court of Quarter Sessions of the Peace, which met from June 7–9, 1762. The 1722 “Act For Establishing Courts of Judicature in This Province” established the Court of Quarter Sessions of the Peace and Gaol Delivery that was to meet at Philadelphia for three days, starting on the first Mondays of March, June, September, and December. See 3 *SALP* 298–309 and “The Legal Papers and their Context” in Volume One of the present edition.

⁶ That is, his law practice.

⁷ This would have been June 17–18, 1762, but JD did not make the trip.

⁸ JD addressed this letter: “To / Thomas McKean Esquire / in / New Castle.”

47

To Mary Cadwalader Dickinson, June 14, 1762

Honourd Mother,

I expected to have set out this Week for the Jerseys—but am obligd to begin another Journey tomorrow— Sir W[illia]m Johnson¹ is come to Easton² to hold a Treaty with the Indians & to enquire into their Complaints concerning our Proprietary pretended Purchases—³ As it is lookd on by the most sensible People here as a Matter of great Importance, I have been prest by many of my worthy Friends of the best Note in this Town to attend the Treaty—& as I think it my Duty to shew how much Respect I have for their Desire—I shall go off tomorrow with M^r. Roads, M^r. Pemberton, M^r. Pennington & several others—⁴ I dont know how long I shall be gone—but I expect great Entertainment & Advantage from this Trip—

I have been a good Deal fatigued of late with Business—tho[ugh] without the least Indisposition—

If I coud learn the Dutch Art of saving all I get,⁵ I shoud be a rich Man in a little Time— But I have no Ambition of making Fountain of [m]y Heirs—

Please to give my Love to my Dear Brother⁶ & Tommee,⁷ Eben,⁸ &c

Pray take Care of your Health—& dont neglect Bark⁹—& this will be esteemd an Obligation of the highest Nature that can be conferrd on

your most dutiful &
most affectionate Son

John Dickinson

Philadelphia June 14th 1762

ALS (PHI-RRL)

¹ Sir William Johnson, first baronet (c. 1715–1774), was superintendent of Indian affairs for the northern department. See *PWJ*.

² Easton, Northampton Co., Pa., is about 76 mi. from Philadelphia.

³ The treaty was held with the Delaware Lenape, June 18–28, 1762, to discuss the Walking Purchase of 1737, by which the Penn family claimed 1.2 million acres of land and forced the Lenape to vacate it. In a speech to Lt. Gov. James Hamilton and Sir William Johnson, Teedyuscung (c. 1700–1763), leader of the Lenape, retracted his charges of forgery and fraud against the Pennsylvania proprietors. For more, see *Local Historical and Biographical Notes: Collected by Ethan Allan Weaver, From Files of Newspapers Published in Easton, Penna.* (Germantown, Pa.: n.p., 1906), 59; Records of the Friendly Association for Regaining and Preserving Peace with the Indians by Pacific Measures, PSC-Hi; *PWJ*, 3:760–91.

⁴ Samuel Rhoads (1711–1784) was a prominent Quaker architect and carpenter who represented the city of Philadelphia in the Pennsylvania Assembly. He later served as a delegate to the Continental Congress and as mayor of Philadelphia. Edward Pennington (1726–1796) was a leading Quaker merchant who represented Philadelphia Co. in the Assembly. In addition to the representatives of the proprietors and “a Committee of the Members, of Assembly,” the conference also included “a great many Gentlemen, Inhabitants of Philadelphia, and other Parts of the Province of Pennsylvania,” which likely explains the presence of JD and Israel Pemberton. In 1756, Pemberton established the Friendly Association for Regaining and Preserving Peace with the Indians by Pacific Measures. See *PWJ*, 3:761; *LLP*, 2:1112; 3:1038–54, 1155–70. For Israel Pemberton, see doc. 2:52, n. 2, below.

⁵ A reference to the stereotype of the Dutch being frugal, which grew out of the 17th-cent. hostilities between England and Holland. See the *OED*, under *Dutch*.

⁶ Philemon Dickinson.

⁷ Thomas Willson (Wilson; d. 1763), of Dover Hundred, Kent Co., Del., witnessed Samuel Dickinson’s will (Kent Co., Del., Register of Wills, De-Ar); JD later managed Willson’s estate (see doc. 2:78, n. 6, below).

⁸ Probably Ebenezer Manlove (c. 1708–c. 1772), of Kent Co., who was one of the witnesses to Willson’s will (Kent Co., Del., Register of Wills, De-Ar).

⁹ Tree bark was ingested to treat various ailments.

48

To Thomas McKean, June 14, 1762

Dear Sir,

A sudden indispensable Necessity obliges Me to set off for Easton without seeing You, which I am perswaded You will pardon when I have an Opportunity of speaking to You—¹ As I imagine You will be in Town tomorrow or next Day, I shoud be extremely glad if You woud turn your Horse’s Head to Easton— You will see a glorious Count{r}y—the celebrated Bethlehem & Nazareth & Gnadenhuten²—a thousand Indians—Sir W[illia]m Johnson &c &c In short I think We may spend a Week there with great Pleasure, & after that You

may transport Me to the Jerseys “To Thebes, to Athens, or the Lord knows where.”³

I desire You woud come up, & I will give You a better Reason than any I have mentiond— But not now— I hope You will be very much pleasd with so many Circumstances uniting to make a Trip to the most remarkable Parts of our Province agreable—& it will not break in upon our larger Scheme at all— The high Hil[ls are] so healthy, that many sickly People [*torn*] hearty in seven or eight Days—

I am sure You will please Y[*torn*] coming, & more sure You will p[*torn*]

your very affecti[onate]
& h[um]ble Servan[t]
John Dicki[nson]⁴
Philadelph[ia]
June 14th—1762

ALS (PHI-TMP)

¹ See doc. 2:47, above.

² Gnadenhutten was a Moravian mission station in Northampton Co., Pa., that was destroyed by Indians allied with the French in 1755. It was located at what is now the town of Lehighton in Carbon Co.; Bethlehem and Nazareth were also Moravian mission settlements.

³ Here, JD is conflating passages from two different works by Alexander Pope, the first of which is Pope’s *Essay on Man, Epistle II*: “At Greenland, Zembla, or the Lord knows where” (line 210). The second is from Pope’s translation of Horace to Augustus: “To Thebes, to Athens, when he will, and where.” Pope noted that this passage is about one who “is equally knowing in the manners of the most different people; and has the skill to employ those manners with decorum.” See *The Works of Alexander Pope Esq.*, 9 vols. (London: J. and P. Knapton, 1752), 9:192–93; Hor. *Epist.* 2.1.213.

⁴ JD addressed this letter: “To / Thomas M^cKean Esquire.” McKean endorsed it: “[Lett]^{re} June [*torn*] / John Dickins[on] / N.º 4.”

49

Abraham Taylor’s Deed for the Library Company of Philadelphia, June 30, 1762

The Library Company of Philadelphia was established as a corporation on March 24, 1742, by a charter from proprietors John, Thomas, and Richard Penn, issued in their names by Deputy Governor George Thomas, first baronet. The document below details JD’s purchase of Abraham Taylor’s share in the corporation in 1762, most likely precipitated by Taylor’s impending return to England later in the year. As the *Pennsylvania Gazette* reported in early July, the “principal Gentlemen of this city” hosted a farewell party at the State House to thank Taylor

June 1762

“for his kind, prudent, blameless, and affectionate Behaviour, as a Friend, Fellow Citizen and Companion.”¹ JD also knew Taylor from having defended the brig *Elizabeth* in a case before the Admiralty Court in 1759 in which Taylor, as deputy collector of customs, was the plaintiff. See doc. 2:19, above.

[JD:] <Deed from Abraham Taylor>²

Know all Men by these Presents that I Abraham Taylor of the City of Philadelphia Esquire for and in Consideration of the Sum of Seventeen Pounds current Money of Pennsylvania to me in Hand paid by John Dickinson of the said City Esquire, the Receipt where of I do hereby acknowledge **have** bargained, sold assigned and set over, and by these Presents **do** bargain, sell, assign and set over unto the said John Dickinson and to his Executors, Administrators and Assigns all my Part, Share, Proportion, Right, Title, and Interest of and in the Books, Estate and Effects of and belonging to {or} in any wise appertaining to the **Library Company of Philadelphia, To have and to hold** the said Part, Share & Interest in the said Books, Estate and Effects unto the said John Dickinson his Executors, Administrators & Assigns, to his and their own proper Use & Behoof **In witness whereof** I have hereunto set my Hand and Seal this [*blanks filled in by Taylor:*] <Thirtieth> Day of <June> in the Year of our Lord One Thousand Seven Hundred and Sixty Two.

Sealed & delivered }
in the presence of }

Naboth Yearwood³
James Budden⁴ [*page break*]

Abra^hm Taylor. [*seal*]

Received the Day of the Date of the within written Assignment of the within named John Dickinson the Sum of Seventeen Pounds lawful Money of Pennsylvania, it being the full Consideration for the said Assignment.—

Witness

Abra^hm Taylor.

Naboth Yearwood
James Budden

[*Francis Hopkinson:*] <Recorded, A{i}n the Company's Book A, Page 36.th, August 6.th 1763.—

[per] Fra^s Hopkinson,⁵ Secr[etar]y>

DS (PHi-Logan)

¹ *PG*, July 1, 1762.

² For Abraham Taylor was a merchant, provincial councilor, associator colonel, and deputy collector of customs. See doc. 2:19, n. 1, above. See also *PBF*, 3:428.

³ In 1757, Naboth Yearwood entered the academy associated with the College of Philadelphia, later the University of Pennsylvania. See Thomas Harrison Montgomery, *A History of the University of Pennsylvania* (Philadelphia: G.W. Jacobs & Co., 1900), 554.

⁴ James Budden (c. 1744–1788) became a Philadelphia merchant and signed the Oct. 25, 1765, Philadelphia nonimportation agreement. During the Revolutionary War, he served as a lieutenant in the Philadelphia Troop of Light Horse.

⁵ Francis Hopkinson (1737–1791) served as secretary of the Library Company from 1759 to 1769. He practiced law in Philadelphia and ran a dry goods store there before moving to Bordentown, N.J., in late 1773 or early 1774. While representing New Jersey in the Continental Congress, he signed the Declaration of Independence. He was later a judge in Pennsylvania.

50

**“List of Contributions and Legacies [to the Pennsylvania Hospital],”
The Pennsylvania Gazette, July 15, 1762**

Between July 16, 1761, and April 28, 1762, JD contributed at least £25 to the Pennsylvania Hospital. The hospital was the first of any significance in the colonies. Located between Eighth and Ninth and Spruce and Pine Streets, it was completed in 1756. Funding was provided by the Pennsylvania Assembly and subscriptions.

51

From Jacob Spicer, August 6, 1762

Cape May August 6th. 1762

Sir,¹

I am advised by your Clerk that Three of the Books I wrote for may be had & will Cost £7.16—² which I send by the Bearer to whom you may please to deliver the Books on his paying you the Money Sent by

Y[ou]r h[um]ble Serv[an]t
Jacob Spicer³

Hawkin's pleas of the Crown 3.12.
Fitzherbert Natura Brevium.⁴ 2.2—

September 1762

Registrum Brevium⁵....

2.2

£7.16. a above

U.A

J.S.

ALS (De-Ar)

¹ Either Jacob Spicer (1716–1765), a wealthy merchant and contractor during the French and Indian War, who served in the New Jersey Assembly from 1744 until 1765, or his son of the same name (b. 1742). The books evidently belonged to the estate of John Moland, as Spicer's payment was entered into the executors' accounts (PHi-Logan).

² Not found.

³ Writing from Cape May, N.J., Spicer addressed this letter: "To / John Dickinson Esq^r: / attorney & Counsellor at / Law in Philadelphia / [per] favour of M^r. Salathiel Foster." Salathiel Foster (1725–1792), of Philadelphia, added notation: "Rec[ei]ve[d] Sept. 11th –1762 The three Books abovementioned for M^r. Spicer / Salathiel Foster."

⁴ Anthony Fitzherbert, *The New Natura Brevium of the Most Reverend Judge*, 8th ed. (London: H. Lintot, 1755).

⁵ Ralph de Hengham, *Registrum Brevium tam Originalium, quam Judicialium*, 4th ed. (London: R. and E. Atkins, 1687).

52

To Israel Pemberton, September 11, 1762

This letter and Pemberton's three replies (docs. 2:57–59, below) give a sense of the property law on which JD's practice was focused. They relate to the proposed transfer of a parcel of land from Quaker George Dillwyn to the Quaker-run Overseers of the Public School.¹

JD's object was to secure use of the land by the Overseers despite the restrictions imposed by the deed. Dillwyn held the land in fee-tail, meaning that the estate was limited to a subset of heirs; the fee-tail must have existed prior to Dillwyn's taking possession. As the land consisted of two parts, one that Dillwyn possessed and one that had been sold, JD discusses each part separately, considering how to protect the Overseers of the Public School in light of the fee-tail. It seems that JD proposed a deed that would permit the part of the parcel in Dillwyn's possession to be used by the Overseers without interfering with the operation of the fee-tail.

In the case of the part of the parcel that had been sold, JD recommended the use of a deed declaring the uses of that part. But it seems that a deed declaring uses would not be effective by itself to bar a fee-tail and that a lawsuit would be necessary. The result of the lawsuit, JD surmised, would be that the Overseers would acquire the land in fee simple, barring the fee-tail.

This ordering of these letters may not be accurate. The present document with the earliest date, from JD explaining the deed, seems to answer Pemberton's later requests for explanation. There are a few possibilities: the clerk misdated this letter; Pemberton made multiple requests or there were multiple deeds; or JD's letter miscarried, requiring Pemberton to make multiple requests.

Sir²

I have look't over the Deeds & papers you left with me—³ I think that M^r. George Dilwyn⁴ by a Recovery with Single Vouchee, might barr the Estate Tail as to that Part of the Lot of which he was Seized at the time, without a Deed to lead the uses, if the Recovery was without Consideration: Because in such Cases the Recovery is supposed by Implication of Law to be Suffer'd for the use of him that Suffers it— But as some Objections maybe made, I think it would be the best Method to have the uses declared by a Deed made between the Demandant & Tenant, which may be done either before or after the Recovery.—

As to that part of the lot that has been Sold off, I apprehend the Estate Tail in it, cannot Possibly be barr'd without Double Vouchers— for M^r. Dilwyn is not a good Tenant to the Præcipe as to that & even if those Persons to whom it is Sold, should Reconvey to M^r. Dilwyn, & he then should Suffer a Recovery with Single Voucher it would not barr the Estate Tail—for in such Case he wou'd be Seized of a New Estate in Fee, & not of the Old Estate Tail— And as a Recovery with Single Voucher barrs only that Estate of which he was Seized at the time, of Consequence the Estate Tail is not Affected.— I am of Opinion, that the way to barr the Estate Tail in that Part wou'd be for those who have purchased to join with M^r. Dilwyn in a deed to lead the Uses—by that deed to make some Friend a Tenant to the whole—& another friend Demandant & declare the Uses according to the Several Intrests M^r. Dilwyn coming in there as Vouchee, may barr any Estate Tail he ever had in the Premises

I am Sir Your friend & very h[um]ble Servant
John Dickinson⁵

Lc (PHi-Norris/Fairhill)

¹ Now functioning as the William Penn Charter School, the Public School was founded at the behest of Penn in 1689 and is the oldest Quaker school in the country. Located at Fourth and Chestnut Sts., the Philadelphia school was the first to offer education to children of all religions. Over the course of the 18th cent., it expanded to

include the poor, girls, and blacks. The Overseers, created in 1708, consisted of 15 Quakers charged with overseeing the school. Papers for the William Penn Charter School, as well as a folder containing items concerning Dillwyn's deed, are in PHC-Quaker Coll. See James Pyle Wickersham, *A History of Education in Pennsylvania, Private and Public, Elementary and Higher* (Lancaster, Pa.: Inquirer Publishing Co., 1886), 43–44.

² Israel Pemberton (1715–1779) was one of the leading Quaker merchants in Philadelphia. Once a member of the Pennsylvania Assembly, Pemberton was one of the eleven Quakers who had abdicated their seats rather than violate their consciences by raising a militia during the French and Indian War. He then founded the Friendly Association for Regaining and Preserving Peace with the Indians by Pacific Measures and continued other philanthropic ventures in Pennsylvania, including founding schools, the Pennsylvania Hospital, and the first fire company in Philadelphia.

³ Not found.

⁴ George Dillwyn (1738–1820), a Philadelphia Quaker, struggled as a businessman and became a minister in 1766.

⁵ An internal address was added: “Sept[ember] 11. 1762 / To M^r. Israel Pemberton (Copy).” It was also endorsed in an unidentified hand: “Rec[eive]d Sep[tembe]r”; and notated in an unidentified hand: “John Dickinson his / Opinion Relative to Geor[ge] Dillwyn Barring / the Est[at]e Tale on Lot in / Second & Sasafrass streets / &c.”

53

To George Read, October 1, 1762

Dear Sir,

I took the Liberty a few Days to make You a troublesome Request to try a Cause between Williams & Humphries Husted & [Bow]les, & another between Dennis & Campbell, at your adjourn'd Court, as I shall be prevented from attending, by several Causes of Consequence in our Supreme Court to be tried at that Time— My Letter with a short State of each Case I presume You have rec[eive]d, & hope You will be so kind as to favour Me with an Answer—¹

Another Request I have to make to You is, that You will if You approve of it, propose the inclos'd Law² to the Assembly at the next Sessions, as useful & necessary to be past.

It is almost an exact Copy of the Pennsylv[ani]a Law to this Purpose, & I wonder how it has been so long neglected— My Reason for desiring this Law to pass, is that I know it will contribute to the Advancement of Justice—particularly in one Instance— And I believe every Colony besides yours has made Provision in such Cases—

I assure You upon my Honour that I have not the least Interest in promoting such a Bill— But I know some Persons woud industriously

John Dickinson Writings and Correspondence

oppose it, if they could find out that either my Head or Hand or even my little Finger had been employd in framing it,

“I am magnum odium manet alta mente repostum”—³

I shall therefore be greatly obligd to You if You will be so good as entirely to suppress my Name—

You can introduce the Matter very well by mentioning the Propriety of such a Law to our worthy Friend M^r. Vanbeber, who as a Judge may with great Consistence of Character desire Leave to bring in such a Bill—So might M^r. Rice—I dont know which has most Influence in the House—⁴

You may congratulate Me on my Salvation, for I am certainly among the Elect—& may enter into the Assembly of righteous Men—as I hope they all are—⁵

My Pleasures is, that this happens without Opposition, or the Discontent of those I esteem—which I regard as a great Happiness— M^r. S[amuel] W[harton] made a candid manly Declaration of his Reasons for opposing Me last Year, which were the same You once mentiond to Me, & I think sufficient—⁶ It would have given Me great Pain, to have been the Occasion of Uneasiness to a Man I so much respect, as I do M^r. B[aynton].—⁷ But now I flatter Myself with {coming in with} the general Approbation of good Men—

We have receiv[er]d a disagreeable Piece of News by the Way of New York—that the Emperor of Russia is dethroned—& what is still more extraordinary, that the Imperial Authority is conferrd on his Consort—⁸

We expect Particulars every Moment— If this is true, Who in his Senses would take those two great Blessings—an Empire & a Wife together— Is it not better to receive a Subsidy from an honest Farmer to recover his Wheat field from some usurping Neighbour, & march gallantly at the Head of four & twenty Jurymen to attack him in the Redoubts of his forcible Detainer—than to make half Europe turn pale with letting loose thirty thousand Russians to secure Silesia to the King of Prussia?⁹

I confess, I should like to make an immense Bustle in the World, if it could be made by virtuous Actions— But as there is no Probability of that, I am content, if I can live innocent & belovd by those I love, in the first Class of whom You are always esteemd by Dear Sir,

your most affectionate Friend &
very h[um]ble Serv[an]t

John Dickinson

October 1762

Philad[elphi]a Oct[obe]r 1st—1762

Please to have the Law copied over, least my Clerk's Hand should be known.

ALS (DeHi-Rodney)

¹ Not found. Possibly the Supreme Court for Delaware, which met on Oct. 5 at New Castle; Oct. 9 at Dover; and Oct. 14 at Lewes. The Pennsylvania Supreme Court met on April 10. See 1 *LGD* (1763) 93; 3 *SALP* 302; *Mr. Weatherwise's Pocket-Almanac, (on an Entire New Plan.) for 1763* (Philadelphia: W. Dunlap, 1762), 18.

² The next session of the Delaware Assembly met on Oct. 20. During the next session, on March 31, 1763, they passed "An Act for the More Easy and Speedy Recovery of Legacies," which is an almost verbatim copy of Pennsylvania's "Act for the More Easy Recovery of Legacies within this Province," passed on Feb. 3, 1743. See *Anno Quarto Georgii III. Regis.* (Wilmington, Del.: J. Adams, 1764), 84–89; 4 *SALP* 388–91.

³ Lat. a great occasion of hatred stored away, remaining deep in the mind. With this allusion, JD compares himself to Æneas, a just man relentlessly pursued by the hatred of Juno. "*manet alta mente repostum*" is a literal quotation from Virgil, while *magnum odium* is JD's addition. JD also added "I am," but it is ambiguous here. It reads well enough if he intended the English, "I am." Alternatively, the Latin *iam*, "now, already," is a plausible reading. See Verg. *Aen.* 1.26.

⁴ Delaware judge Jacob Van Bebber (see doc. 2:10, n. 1, above), had served in the two preceding assemblies but was not reelected in 1762. Although Evan Rice (see doc. 2:21, n. 13, above), was elected, there is no evidence that he took any action on JD's proposal. Both Van Bebber and Rice were elected to the 1763 session that passed the law discussed at n. 2, above. See *PG*, Oct. 7, 1762, Oct. 6, 1763.

⁵ Friday, Oct. 1, was election day in Pennsylvania, and JD was chosen to represent Philadelphia Co., Pa., in the Pennsylvania Assembly. See doc. 2:55, below.

⁶ Samuel Wharton (1732–1800), of Philadelphia, was a merchant and land speculator.

⁷ Probably John Baynton (1726–1773), a merchant and Wharton's business partner.

⁸ In July 1762 Peter III (b. 1728), emperor of Russia, was deposed and later assassinated, and his wife Sophie assumed the throne as Empress Catherine II (1729–1796). Her accession was first reported in the *PG*, Oct. 7, 1762, and she became widely known as Catherine the Great.

⁹ This is a reference to the Treaty of St. Petersburg, May 5, 1762, which concluded fighting in the Seven Years' War between Russia and Prussia. Under the treaty, with Russian help, the Prussians recaptured Silesia from Austria in a campaign that lasted from June to October 1762.

54

To William Peters, October 6, 1762

Sir,¹

Please to make an Entry in your Land office for—Tracts of Land now situate in Queen Anns Country in Maryland, but which will fall into Kent Cou[nty] on Delaware on the Division of the Provinces.² The Entry is to be for Edward Wright³ of Queen Anns Country

aff[ore]s[ai]d who is in Possession of both t[rac]ts under Maryland Surveys.

I desire You will be so good as to make this Entry, & issue a Warrant or use such other Measures as are proper according to the Method of proceeding in your office in such cases for securing these lands to Edward Wright in Fee[s]imple and the Expences there—be paid by sir,

[Your humble obed[ient] serv[an]t
John Dickinson]⁴

October 6, 1762

Typed (PHi-JDPP)

¹ William Peters (1702–1789) was a Philadelphia lawyer and judge. In 1760, he was appointed secretary of the Pennsylvania land office.

² JD is referring to the upcoming survey of the disputed boundary between Maryland and Pennsylvania, which occurred from 1763 to 1767 and created the Mason-Dixon Line.

³ Possibly Edward Wright (d. 1787), whose father, Edward Wright (d. 1741), represented Queen Anne's Co. in the lower house of the Maryland legislature for many terms between 1717 and his death. The elder Edward Wright owned 1,350 acres in Queen Anne's Co., which may be the source of this land.

⁴ JD addressed this letter: "W[illia]m Peters Esquire / Secretary."

55

Election Announcement: Representative from Philadelphia County to the Pennsylvania Assembly, *The Pennsylvania Gazette*, October 7, 1762

This announcement lists the "Representatives, Sheriffs, Coroners, &c." elected in Pennsylvania on October 1, 1762. JD was one of eight representatives listed from Philadelphia County. After the election, JD appeared first in the House during the Second Session, on January 10, 1763. For a detailed outline of JD's activities during this term, see the Appendix.

56

From Mary Cadwalader Dickinson, October 9, 1762

My dear Johnny

we have had many Alarming Accounts of the disorder which rages in town¹ but I was willing to believe that if they were true you would have been down here before now— but yesterday one Cogill was here

October 1762

who is Just come down; A sober man not willing to make the worst of it— He says it is A Malignant fever Much like A pestilence; is called A Spotted fever from the mortification that Appears on the breast and side at first but Spreads over the whole body—that it is in market Street and Above it— I give these particulars that you may see what Just grounds I have for fears— you may much better conceive than I am Able to Express how deeply I am Affected by such an Account— how can you Answer to your own heart—by running such an unnecessary risque— if you have no regard for yourself remember A Mother who will be one of the most unhappy living if you should be too too Negligent About yourself till it is too late— I don't know what to say— dare hardly think— either come down—out of the danger—or let me hear by next post there is none— you must know what A painful week it will be to your most Afet{c}tionate Mother

Mary Dickinson

october [th]e 9th 1762

ALS (PHi-Logan)

¹ There was a yellow fever epidemic in Philadelphia during the fall of 1762. Dr. John Redman (1722–1808) saw his first case on Aug. 28, and by the end of October, the outbreak had ceased. See John Redman, *An Account of the Yellow Fever as It Prevailed in Philadelphia in the Autumn of 1762* (Philadelphia: College of Physicians of Philadelphia, 1865).

57

From Israel Pemberton, October 30, 1762

Respected Friend

The overseers of the Public School having agreed to take such a title from George Dilwyn, as Thou may'st judge to be unexceptionable, we request thee to review the title Deeds, Exemplification of the recovery &ca and as soon as thou can'st conveniently, to give us thy opinion of what is incumbent on him to do to enable him to convey the Lott to us.

Thy assured ffr[ien]d¹
Isr: Pemberton²

Seventh day³ morning
30. 10 mo[nt]h 1762.

ALS (PHi-RRL)

¹ Here, “ff” is an archaism for “F.”

² Pemberton addressed this letter: "To / John Dickinson / Counsellor at Law."

³ That is, Saturday.

58

From Israel Pemberton, December 6, 1762

Respected Friend

Being in some doubt whe[the]r the deed for leading the uses should be executed by one or both the parties (tho[ugh] I think the latter) I choose to defer it till thy return, thus signifying which by the bearer will enable me to compleat it and please to Send by him the deeds &ca. remaining in thy hands, if not already deliv[ere]d to L[ewis] Weiss.¹

Thy assured fr[ien]d

Isr: Pemberton²

Second day³ morn[in]g
6. 12 mo[nth] 1762—

ALS (PHi-RRL)

¹ Lewis Weiss (Wilhelm Ludwig Weiss; 1717–1796) was a Moravian attorney and scrivener living in Philadelphia; he often did work for the Pennsylvania Assembly.

² Pemberton addressed this letter: "To / John Dickinson Esq^r. / Counsellor & Attorney at law."

³ That is, Monday.

59

From Israel Pemberton, December 21, 1762

Respected Friend

if Thou wil't be so Kind as to peruse the draught made by L[ewis] Weiss of a deed from George Dilwyn to the Overseers of the Public School & give us thy Sentiments thereon it will oblige us. I send all the deeds, as thou may'st incline to review [th][e]m. I find among them a Copy of a writt, & as thou ment[ione]d one being wanting in the office, did not Know but this may be the Copy of it.¹

Thy Assured ffr[ien]d

Isr: Pemberton

21. 12 mo[nt]h 1762.

ALS (PHi-RRL)

¹ Enclosures not found.

[JD], "On the Death of John Moland, Esq,"
The Pennsylvania Gazette, December 30, 1762

Although the evidence of JD's authorship of this poem is circumstantial, the various pieces taken together make a case for attribution. Of the lawyers working with John Moland, JD was one of the closest to him and his family. More significant, he was the only one with the initial "D.," which is also how JD signed "A Song" (doc. 2:16, above). As JD's writings indicate, he appreciated and frequently cited Virgil and Alexander Pope, the origins of the Latin epigraph. Although the lady addressed as "Delia" may be nothing more than a literary trope, it could be Hannah Griffiths (1727–1817), cousin of JD's future wife Mary Norris, who wrote poetry under the penname "Fidelia." The similarity between this poem and Griffiths's own verses on death suggests that she may have had a hand in composing it.¹

PHILADELPHIA, December 30.

To the PUBLISHERS of the PENNSYLVANIA GAZETTE.

The inclosed Verses lately came to my Hands; and as the Praises ascribed were justly due to the Character of a Man, beloved and lamented by all his Acquaintance, your inserting them in your next Gazette, which will happen to be published on the Anniversary of his Death, will oblige your humble Servant,

A.B.²

On the Death of JOHN MOLAND, Esq; Counsellor at Law.

To a LADY.

His saltem accumulẽm donis, fungarq̃ue inani

Munere—

VIRG.³

SUPPRESS, dear DELIA, thy too constant Sighs,

Nor pain thy Breast with unavailing Grief:

Stop the soft pious Sorrows of thy Eyes;

They cannot give thy wounded Heart Relief.

Can Floods of Tears, in bitter Anguish shed,

Excite Compassion in relentless Death?

Can Eloquence of Sighs, when once 'tis fled,

Back to its Dwelling call the parted Breath?

Sooner the Sun shall quit his flaming Course,

The firm Foundations of the Earth decay:
Sooner shall Rivers seek their distant Source,
Or wand'ring Stars forget their stated Way.
No more his graceful Form shall meet my Sight,
No more his polish'd Manners charm my Soul;
His chearful Converse cheat the gloomy Night,
And bless the circling Hours as they roll.
For Knowledge spread to him her pleasing Page,
To him her ample Treasures all resign'd;
The intellectual Wealth of ev'ry Age,
Whate'er adorns or dignifies the Mind.
Easy tho[ugh] learn'd, and elegantly wise,
With Wit polite, and good without Pretence,
His Worth escap'd the View of heedless Eyes—
Few are the Friends of Virtue and of Sense.
Unvex'd by sordid Cares, with equal Mind
By Reason's temp'rate Rules he learnt to live:
Ambitious Toils and gainful Arts declin'd—
He sought the gentle Joys Content could give.
While Candour and Sincerity shall please;
While Honesty bestows the noblest Name:
His sacred Memory secur'd by these,
The justest Tribute of Applause shall claim.
Life's busy Scenes with spotless Honour past,
Too gen'rously for others long employ'd:
Retirement's peaceful Shades obtain'd at last,
Each dear domestic Blessing he enjoy'd.
On rural Thoughts intent, that little Field
To wave with future Harvests he design'd;
And there, his Garden blooming Flow'rs to yield,
Where yonder Oak is o'er the Brook reclin'd.
Scarce glow'd the pleasing Prospect in his Breast—
And sunk for ever in a sudden Grave—
Beneath the common Turf now laid at Rest:
For him no Flow'rs shall bloom, no Harvest wave.
O fleeting flatt'ring Life! thy Hopes how vain?

Thy Promises how faithless, and how fair?
 Just when Success our warmest Wishes gain,
 Thy melting Visions vanish into Air.
 What tho[ugh] no sculptur'd Urn, or breathing Bust,⁴
 No Pomp of Woe o'er his Remains appear;
 Yet all the Worthy that approach his Dust,
 At MOLAND's Tomb shall drop a tender Tear.
 What tho[ugh], on modest Merit unbelov'd,
 Neglecting Pride and Folly ever frown;
 The good Man, by his gracious God approv'd,
 Unfading Wreaths of Happiness shall crown.

D.

¹ For more on Griffiths, see *ANB*.

² "A.B." was a common pseudonym; JD used it in his "Centinel Letters," *PJ*, April 28, May 5, 12, 1768.

³ Lat. "to heap at least these gifts on my descendant's shade and perform an unavailing duty." Verg. *Aen.* 6:885.

⁴ The phrase "breathing bust" appears in "An Ode to Sculpture" in *A Collection of Poems*, 6 vols., ed. Robert Dodsley (London: J. Hughs, 1758), 6:280. JD quoted from that volume in his commonplace book. See doc. 2:87, n. 33, below.

61

**Elizabeth Moland St. Clair, Memorandum for
 John Dickinson, [c. 1762]**

Memorandum for John Dickinson Esq^r.¹

that he will please to draw out an Exact Stat[e] of the late M^r Molands affairs so that the Neare[st] Computation may be made after the depts are p[ai]d what is due to the Children

out of the Estate it will be necessary to give an allowance to the 3 Sone Rober[t] Moland² who is at Sea for a ~~mantanance~~ {necessarys} and for William who is at Princetown College

that the remaining part may be given ~~for~~ to M^{rs} Moland for the mantanance of the 2 Young[est] Children³ this is only a Scheme of the preasant⁴

AD (PHi-Logan)

John Dickinson Writings and Correspondence

¹ Elizabeth (Betsey) Moland married Sir John St. Clair (c. 1710–1767), third baronet, on March 17, 1762. A colonel in the British Army, St. Clair was deputy quartermaster general for North America.

² Robert Moland (b. 1746) was the fourth youngest Moland child, and their eldest son.

³ Joseph Moland (1753–1787) and Grace Moland (b. 1757) were the youngest of six children.

⁴ JD endorsed this document: “Lady St. Clairs / Directions about the / Estate—”

1763

62

From Hannah Moland, [c. 1763]

After John Moland's death (see doc. 2:29, above), Hannah Moland, interacted with JD several times regarding her father's estate and assisting with her affairs. On July 13, 1762, for instance, Moland instructed "Miss Hide" to call on JD, who would "answer her account," which he did on August 5.¹ JD corresponded with Moland in 1763 and 1764, as well. On March 1, 1763, JD submitted £30 to Moland on the instructions of her older sister, Elizabeth Moland St. Clair (see doc. 2:32, n. 1, above), and on April 23, 1764, JD paid Hannah and her mother, Catherine Hutchinson Moland, £13. Last, on June 26, 1764, Hannah Moland received £15 from JD, after which JD's interactions with her likely became less frequent. The next record of JD's engagement occurred on July 22, 1767, when JD paid £38.6 to Hannah Moland Hay, who had then married Captain David Hay of the Royal Regiment of Artillery.² Hay, a Scotsman, supervised the Southern Department's artillery until at least 1768, and during Colonel Henry Bouquet's 1764 expedition to Ohio he commanded Fort Pitt. On July 23, 1772, Hay was commissioned major, and in August 1773 he returned to Britain with his Royal Artillery company, among which were 23 men, 19 women, and 15 children. It is probable that Hannah Moland Hay was among this group, and they possibly settled in Chatham, Kent County. Major David Hay was later imprisoned in Fleet Prison, London, for debt, but on August 29, 1777, he was commissioned lieutenant colonel.³ The conjectural dating of this document is thus based on JD's interactions with Hannah Moland between 1763 and 1764, and it is placed at the earliest possible point.

S[i]r

Please to order the Curricl⁴ to be Delivered to Adam Eavey⁵ as he will take the Trouble to Sell, My Best Compliments Attend you

Hannah Moland⁶

ALS (PHi-Logan)

¹ Hannah Moland to "Miss Hide," July 13, 1762, PHi-Logan.

² For JD's engagements with the Molands and Hays, see PHi-Logan.

³ See *The Papers of Henry Bouquet*, 6 vols., ed. Donald H. Kent et al. (Harrisburg: Pennsylvania Historical and Museum Commission, 1951-94), 5:261; Michael N. McConnell, *Army and Empire: British Soldiers on the American Frontier, 1758-1775*

(Lincoln: University of Nebraska Press, 2004), 66; *London Gazette*, June 1–4, 8–11, 1776, Sept. 9–13, 1777. See also Hannah Moland Hay to Thomas Pinckney, Aug. 16, 1792, Jan. 7, 1793, *The Papers of the Revolutionary Era Pinckney Statesmen Digital Edition*, ed. Constance B. Schulz et al. (Charlottesville: University of Virginia Press, Rotunda, 2016–); *PTJ*, 24:743.

⁴ A curricule is “a light two-wheeled carriage, usually drawn by two horses abreast” (*OED*).

⁵ Probably Adam Evey (c. 1719–1769), a Philadelphia Quaker and carpenter.

⁶ JD endorsed this document: “Order to deliver up the Curricule to Adam Eavey.”

63

To Mary Cadwalader Dickinson, January 16, 1763

Honour Mother,

I shoud have been very happy in seeing my dear Brother last Thursday was a Week, if he had not informd Me that You have got a Cold— I must declare, that Apprehensions of your exposing Yourself too much to the Weather make Me almost constantly uneasy— Let Me intreat You to take the same tender Care of Yourself that You have always done of Children too little deserving it— This will be infinitely the most grateful Manner to them, of your taking Care {o}for them— Preserve a Life, that will be a perpetual In{c}itement of Us to worthy Actions— Preserve to Us, the highest Delight that Earth can afford Us next to a Sense of the Divine Approbation, the inexpressible Joy of a Parent’s Applause— May indulgent Providence grant Me the Blessing of rendring your Life happy, and I shall believe I have not existed in vain—

I speak for the Fellow as well as my Self, for he has an honest generous Heart—

He is too much engagd, to write, but he desires his Duty may be presented— One Jemmy Maese, an Acquaintance of his is married to a Daughter of Adam Hoops;¹ today the Couple with their Bride Maids Miss Allen & Miss Sims, & my Brother & one Boyle, Bridesmen, make their first public Appearance— He is very hearty

Our Assembly met last Monday Nothing of any Consequence has yet come before Us—& I believe nothing will—till advices are receivd from Home—²

The last Advices make Peace to be quite doubtful— The Conferences at Paris were interrupted by the News of the Havannah being taken—³ Schweidnitz has surrenderd to the King of Prussia, with 8000 Prisoners—⁴ The Spaniards have retreated to the Borders of Portugal

January 1763

into Winter Quarters—⁵ Prince Henry has had a Skirmish in Saxony—⁶ Both Parties pretend to the Victory—

There is great Talk in England of M^r. Pitt's being reinstated—⁷ Nobody speaks of Peace on any other Terms, than a Renunciation of the total North America with Spanish Florida, besides other Articles— No Doubt We shall make an immensely advantageous or rather gainful Peace— Our Commerce will be incredib[le—] Our Riches exorbitant— Our Luxury unbounded—Our Corruption in Time universal—& our Ruin—certain

Such seems the inevitable Fate of Empires—the Consequence of Success—the Fruits of Glory— But unborn Events of such distant Ages—see{ap}pear not related to Us—Tho[ugh] they ought to teach Us Virtue, Humility & Humanity—

I shall be very glad to hear from You—& if You can say You are very well, it will give great Pleasure to

your most dutiful
& most affectionate Son
John Dickinson
Philadelphia
January 16th—1763

P.S. Please to give my Love to Tommy Wilson, & Family— I am very glad to hear he is recoverd—

ALS (PHi-MDL)

¹ James Mease married Isabella (Isabel) Hoops (c. 1739–1827) on Jan. 10, 1763, at the First Presbyterian Church of Philadelphia. She was one of the eight children of Adam Hoops (c. 1709–1771), first coroner of Cumberland Co., Pa., and his wife Elizabeth Finney Hoops.

² On Jan. 10, 1763, the Pennsylvania Assembly met, pursuant to their October 1762 adjournment. They appointed a committee to inform the governor that they were ready for any business that he might bring, and then they adjourned for the day. They were awaiting news from England about the status of the French and Indian War.

³ The peace talks that resulted in the 1763 Treaty of Paris had just begun when news arrived of the Siege of Havana, in which the British invaded Cuba and captured Havana from Spain.

⁴ The Siege of Schweidnitz (now Świdnica, Poland) from August to October 1762 was the last major siege of the Seven Years' War.

⁵ The Spanish invasion of Portugal from May to November 1762 was the primary campaign of the Spanish-Portuguese War, also known as Guerra Fantástica (Fantastic War), which is considered part of the Seven Years' War.

⁶ The Battle of Freiburg, Oct. 29, 1762, in which Prince Henry of Prussia (1726–1802) was victorious, was the last major battle of the Seven Years' War.

⁷ William Pitt (1708–1778) was known as “the Great Commoner.” After successfully leading Britain's efforts during the Seven Years' War, he resigned from the cabinet on

Oct. 5, 1761, amid political and military differences with the recently crowned George III and his ministers. The *PG*, Jan. 13, 1763, described the Great Commoner as “the Great Patriot PITT.” JD was later called “the American Pitt”; see “Extract of a Letter from a Gentleman in Newport,” *PG*, April 7, 1768.

64

To George Read, January 23, 1763

With the warmest wishes, my dear sir, for your happiness and Mrs. Read’s,¹ I congratulate you on the very valuable acquisition each of you has lately made. May Providence be pleased to bestow upon you all the blessings of which life is capable; and may life, as it wears away, be spent in such a manner as to prove a sure source of future felicity. No man will see your happiness with greater joy than I shall, because it will always be a great addition to my own, unless one thing happens of which I am a little apprehensive. I mean that your affections will be drawn into so small a circle that you will forget to love your friends. Pray don’t give me any reason to think this. If you do, I will revenge myself upon you (if you are not too happy to think that any revenge) by taking a wife, and ceasing to be, if my heart will permit it, Mrs. Read’s and your very affectionate, humble servant

January 23, 1763

John Dickinson

Rpt (Read, *Life and Corr.*, 21)

¹ Gertrude Ross Till (1734–1802), of Prime Hook Neck, Sussex Co., Del., married Read on Jan. 11.

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JD et al., “An Act for the Relief of Persons Whose Apprentices or Servants Have Inlisted in the Late King’s, or His Present Majesty’s Service,” March 4, 1763

Servants joining military forces without their masters’ consent was a perennial problem in colonial Pennsylvania, as multiple wars for empire encroached on North America. For example, in 1740, during the War of Jenkins’ Ear, Deputy Governor George Thomas, first baronet, raised a militia for deployment in the Caribbean; among the over 700 who volunteered were indentured servants who had been promised freedom by the governor’s recruiters. “A Petition from Sundry Tradesmen, Inhabitants of the City of Philadelphia” was presented to the

Assembly on the evening of September 7, 1762, “praying Payment for a Number of Apprentices enlisted into His Majesty’s Service.”¹ The Assembly attended to a second petition on the evening of September 22, and recommended the matter “to the Consideration of the succeeding Assembly.”² The new Assembly to which JD was elected met from October 14 to 16, when Lieutenant Governor James Hamilton informed them that “he had no Business to lay before the House at present that required their longer sitting.”³ The Assembly therefore adjourned until January 10, 1763. On January 12, the Assembly appointed a committee of JD, Benjamin Franklin, Henry Cruson (Krewson; c. 1707–1789), Isaac Pearson (d. 1783), James Wright (1714–1775), and John Moor (Moore; c. 1723–1800) to “prepare and bring a bill for the Payment of such Masters within this province as have lost Apprentices by Enlistments.”⁴ The Committee submitted a draft of the bill on January 18.⁵ The bill was read a second time on February 1 and, “after considerable debate,” returned to the committee “for Alteration and Amendment.”⁶ The committee offered an amended version the following day. The Assembly passed the bill on February 3 and sent it to the governor for approval.⁷ Hamilton offered some amendments, to which the Assembly agreed on February 9.⁸ The bill was enacted into law on March 4, 1763.⁹

An ACT for the Relief of Persons whose Apprentices or Servants have enlisted in the late King’s, or His present Majesty’s Service.

WHEREAS by an Act of General Assembly of this Province, passed in the First Year of His present Majesty’s Reign, intituled, “*An Act for appointing certain Persons, herein after named, to apply for and receive the distributive Shares and Proportions which are or shall be allotted to this Province, out of the Sum or Sums of Money granted, or to be granted, by Parliament, to His Majesty’s Colonies in America,*”¹⁰ Provision has been made for the Payment of the Masters or Owners of Servants heretofore enlisted in His Majesty’s Service. AND WHEREAS many Apprentices and Servants, who have bound themselves, or have been bound with the Consent of their respective Parents or Friends, or by Overseers of the Poor, to some of the Inhabitants of this Province, have enlisted, during the present War with *France*,¹¹ in the late King’s, or His present Majesty’s Service, to the great Detriment of their several Masters, for whose Relief no Provision hath yet been made, though it is equally just and reasonable that some Compensation be made to the Masters last mentioned, for the Damage they have

sustained, as to the Masters provided for as aforesaid, BE IT THEREFORE ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor, under the Honourable *THOMAS PENN*, and *RICHARD PENN*,¹² Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent*, and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That *Lyn-Ford Lardner*, *Thomas Cadwalader*, *Joseph Fox*, *John Hughes*, *Joseph Galloway*, *John Baynton*, and *John Morton*, Esquires,¹³ or a Majority of them, or of the Survivors of them, shall, and they are hereby required and impowered, within the Space of Six Months from the Passing of this Act, and not afterwards, to receive the Applications of all such Persons inhabiting within this Province, whose Apprentices or Servants, bound as aforesaid, have enlisted, during the present War with *France*, in the late King's, or His present Majesty's Service, and after a diligent Enquiry into the Circumstances of each Case, to make an Estimate of the Damage which every such Master of an Apprentice or Servant, enlisted as aforesaid, sustained by the Expencc or Charge to which he had been put on Account of such Apprentice or Servant, or by the Trouble such Master had taken, and the Time that had been spent in instructing such Apprentice or Servant in his Trade, Mystery, or Employment respectively, to the Time of his Enlistment, for which the said Master had received no Satisfaction by the Labour of the said Apprentice or Servant, or otherwise.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the said *Lyn-Ford Lardner*, *Thomas Cadwalader*, *Joseph Fox*, *John Hughes*, *Joseph Galloway*, *John Baynton*, and *John Morton*, Esquires, or a Majority of them, or of the Survivors of them, shall, and they are hereby enjoined, authorised and impowered, with the Consent and Approbation of the Governor, or Commander in Chief of this Province for the Time being, and not otherwise, to draw Orders upon the Trustees of the General Loan-Office for such Sum or Sums of Money, not exceeding the Sum of *Twenty Pounds*, for each Apprentice or Servant, as they shall judge to be a reasonable Compensation for the Damage which the Master of such Apprentice or Servant had sustained as aforesaid, at the Time of such Apprentice's or Servant's Enlistment; which Orders so drawn, the said Trustees shall pay and discharge out of, and with, the Monies already received, or to be received, by them on the Sale of Bills of Exchange, drawn by Virtue of the Act herein before recited, and not already appropriated, any Thing in the said Act

to the contrary notwithstanding; and the Orders so drawn and paid, being produced to the Committee of Assembly for the Time being, appointed to settle the public Accounts, shall be by them allowed in Discharge of so much of the Monies by the said recited Act directed to be burnt, sunk and destroyed.

PROVIDED ALWAYS, AND IT IS HEREBY DECLARED, That no Power or Authority by this Act given to the Trustees of the General Loan-Office aforesaid, nor any Thing in this Act contained, is intended, or shall be so construed, as to enlarge or extend the Power of the said Trustees, or invest them with any Right or Authority to act, in any respect whatsoever, in the said Office of Trustees, beyond or longer than the Times and Periods to which their said Trusts are limited, or intended to be limited or restricted, by the several Acts of Assembly of this Province heretofore made for that Purpose, any Thing in this Act to the contrary in any wise notwithstanding.¹⁴

ARGIII (1763), 241–42

¹ *Votes* (1762), 53.

² *Ibid.*, 55.

³ *Votes* (1763), 5.

⁴ *Ibid.*, 8.

⁵ *Ibid.*, 10.

⁶ *Ibid.*, 20.

⁷ *Ibid.*

⁸ *Ibid.*, 23.

⁹ *Ibid.*, 35.

¹⁰ Act of Sept. 26, 1761 (6 *SALP* 114–18).

¹¹ The Treaty of Paris, ending the French and Indian War, was signed on Feb. 10, 1763, but news of the treaty did not reach Philadelphia until late April. See *PG*, April 21, 1763.

¹² Thomas Penn (1702–1775) was the second son of Pennsylvania founder William Penn (1644–1718) and currently governor of the province. Richard Penn (1706–1771) was William Penn's youngest son. Along with their eldest brother, John Penn (1700–1746), they were proprietors of the colony.

¹³ In 1761, Lynford Lardner (1715–1774) was a member of the Governor's Council with pretensions to aristocracy and ties to the Penn family. Cadwalader was also on the council. The others were members of the Pennsylvania Assembly. Joseph Fox (1709–1779), a carpenter; John Hughes (c. 1712–1772), a merchant and farmer; Galloway; and John Baynton represented Philadelphia Co. John Morton (1724–1777) was a surveyor and landowner representing Chester Co.

¹⁴ This act was referred to the King-in-Council on December 9 and allowed to become a law by lapse of time (6 *SALP* 250–52).

JD et al., “An Act to Continue an Act, Intituled, ‘An Act for Regulating Waggoners, Carters, Draymen and Porters within the City of Philadelphia,’” March 4, 1763

On January 19, 1763, the committee appointed to examine the laws of the province reported that the “Act to Regulate Waggoners, Carters, Draymen, and Porters” was set to expire on April 6.¹ The Assembly therefore appointed a committee of JD, John Hughes, Joseph Galloway, Benjamin Franklin, and Samuel Rhoads to prepare a bill to amend and continue the act. The committee brought a draft for consideration on February 22; on the following day, February 23, it was read a second time, then passed on the 24th after a third reading.² Under the terms of the 1761 act, which this 1763 act continued, wagoners, carters, draymen, and porters had to register their carts and wagons with the clerk of the Court of Quarter Sessions of the Peace for Philadelphia. Anyone operating without a proper certificate, or who demanded more than the fixed rates, would be fined.

An ACT to continue an Act, intituled, “An Act for regulating Waggoners, Carters, Draymen and Porters within the City of Philadelphia, and for other Purposes therein mentioned.”

WHEREAS an Act of General Assembly of this Province, intituled, “*An Act for regulating Waggoners, Carters, Draymen and Porters within the City of Philadelphia, and for other Purposes therein mentioned,*”³ was passed in the First Year of the present Reign, and hath been found, on Experience, to be of Use and Benefit to the Inhabitants of the said City: AND WHEREAS the said Act is now near expiring, by its own Limitation, BE IT THEREFORE ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor, under the Honourable *THOMAS PENN*, and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle, Kent, and Sussex, upon Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That the said Act, and every Article, Clause and Thing therein contained (the Clause of Limitation aforesaid only excepted) shall be, and is hereby declared to be, in full Force and Virtue for and during the Term of Five Years, from and after the Publication hereof, and from thence to the End of the next Session of Assembly.⁴

¹ *Votes* (1763), 13.

² *Ibid.*, 29–30.

³ See Act of March 14, 1761: 6 *SALP* 65–69.

⁴ This act was referred to the King-in-Council on December 9. It became a law by lapse of time (6 *SALP* 250–52).

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JD et al., “A Supplement to the Act, Intituled, ‘An Act for Regulating, Pitching, Paving and Cleansing the Highways, Streets, Lanes and Alleys, and for Regulating, Making and Amending the Water Courses and Common Sewers,’” March 4, 1763

On January 19, 1763, the Assembly considered a remonstrance from the commissioners for paving and cleansing the streets of Philadelphia.¹ The Assembly debated the remonstrance on January 28 and decided to appoint a committee of JD, Joseph Fox, John Hughes, Joseph Galloway, Plunkett Fleeson (1712–1791), Jonathan Mifflin (1704–1781), and Benjamin Franklin to “bring in a Bill to empower certain Persons, therein named, to borrow a Sum of Money, for the Use of the said City, out of the *Fifteen Thousand Pounds* granted to His Majesty, for erecting a Fortification for the Protection and Defence thereof, to be repaid by Taxes levied on the Inhabitants of the said City.”² It also formed a second committee of JD, Joseph Fox, John Hughes, Joseph Galloway, Benjamin Franklin, and Samuel Rhoads to prepare a bill to supplement the 1762 “Act for Regulating, Pitching, Paving and Cleansing the Highways, Streets, Lanes and Alleys.”³ On February 9, the Assembly authorized this second committee to consult with the commissioners and “make Report thereon to this House.”⁴ On February 11, the committee presented a draft, which the Assembly debated on February 18 and 19.⁵ The bill passed on February 22.⁶ The 1762 act, and its 1763 supplement, sought to remedy the “imperfectly and badly performed” paving that plagued parts of the city by appointing a paving and cleansing commission that would oversee and regulate all paving and cleansing work.⁷ The problem with the 1762 act was that the tax of three pence per pound of estate value was not enough to cover costs. The 1763 supplementary act established a set of rules for the commissioners to borrow and pay back up to £8,000 to perform their duties. It also established various responsibilities for landowners and residents and a series of fines for transgressors.

A SUPPLEMENT to the Act, intituled, “An Act for regulating, pitching, paving and cleansing the Highways, Streets, Lanes and Alleys, and for regulating, making and amending the Water Courses and Common Sewers, within the inhabited and settled Parts of the City of *Philadelphia*, and for raising of Money to defray the Expence thereof.”

WHEREAS the Paving of the City of *Philadelphia*, within the inhabited Parts thereof, without Delay, will be attended with many Conveniences and Advantages; and it is but just and reasonable, that the Benefits and Emoluments of the Act of General Assembly of this Province, intituled, “*An Act for regulating, pitching, paving and cleansing the Highways, Streets, Lanes and Alleys, and for regulating, making and amending the Water Courses and Common Sewers, within the inhabited and settled Parts of the City of Philadelphia, and for raising of Money to defray the Expence thereof,*” passed in the Second Year of His Majesty GEORGE the Third, should be extended, as soon as may be, to all the inhabited Parts of the said City, inasmuch as every Inhabitant contributes immediately to the Expence thereof. And whereas the Tax and Assessment of *Three-pence* in the *Pound*, on the Estates real and personal within the said City, in each Year, in and by Virtue of the said recited Act of General Assembly, being charged with the Value of Pavements theretofore pitched in the Cart-way, to the Amount of *Four Thousand Pounds*, and upwards, to be deducted from the said Tax, will scarcely produce Money sufficient to defray the Expence of regulating, cleansing and preparing the said Streets for Paving, and therefore not answer the good Purposes intended and designed by the said Act; for Remedy whereof, BE IT ENACTED by the Honourable JAMES HAMILTON, Esq; Lieutenant-Governor, under the Honourable THOMAS PENN, and RICHARD PENN, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle, Kent, and Sussex, upon Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That it shall and may be lawful to and for the Commissioners, nominated and appointed in and by a certain Act of General Assembly, passed in the Second Year of His present Majesty’s Reign, intituled, “*An Act for granting to His Majesty the Sum of Twenty-three Thousand Five Hundred Pounds, for the Purposes therein mentioned,*”⁸ with the Assent and Approbation of the Governor or Commander in Chief for the Time being, and not otherwise, to advance and lend to the Commissioners

nominated and appointed, or to such as shall hereafter be nominated and appointed, in and by Virtue of the Act, to which this Act is a Supplement, for cleansing and paving the Streets of the City of *Philadelphia*, or to a Majority of them, such Sum or Sums of Money, not exceeding *Eight Thousand Pounds* in the Whole, as shall be convenient and necessary for the Purposes mentioned in this and the said Act, out of the Monies liable and subject to their Draught on the Trustees of the General Loan-Office, for the Protection and Defence of the City of *Philadelphia*, and for that Purpose to draw an Order or Orders, as Occasion may be, on the said Trustees, within the Space of Seven Months, from the Passing of this Act, and not afterwards, payable to the said Commissioners, for paving and cleansing the Streets of the said City; which said Sum or Sums the said Commissioners are hereby authorised and impowered to borrow and receive, for the Uses, Intents and Purposes, mentioned and contained in this and the said herein first recited Act of General Assembly. And the said Commissioners for cleansing and paving the Streets aforesaid shall, upon Receipt of the Monies mentioned and specified in such Order or Orders, give a Note or Certificate in Writing of and for the Sum lent, signed by them, or a Majority of them; which Note or Certificate shall be registered in the Book wherein are entered the Proceedings of the Governor and Provincial Commissioners for the Time being.

AND in order to assure and secure to the said Lenders the Disposition and Application of the Monies, which shall be so lent and advanced, to the Uses, Intents and Purposes, to and for which the same, by Law, was given and granted to His Majesty, when it shall become expedient and necessary; BE IT FURTHER ENACTED by the Authority aforesaid, That the Monies so borrowed, shall be repaid and discharged out of the Monies directed to be raised and levied in and by Virtue of the Act to which this Act is a Supplement, on or before the Tenth Day of *March*, in the Year of our Lord, One Thousand Seven Hundred and Seventy; or, if the same shall be sooner demanded by the Governor of this Province for the Time being, and the said Commissioners, or a Majority of them, so lending the same, whenever the same shall be so demanded, and that the said Commissioners for cleansing and paving the Streets aforesaid, whenever such Demand shall be made as aforesaid, or at the Expiration of the Term before mentioned, which shall first happen, shall draw Orders on the Treasurer appointed, or to be appointed by them, by Virtue of the said Act, to which this Act is a Supplement, payable to the Provincial Treasurer, for the Discharge and Payment of the said Notes and Certificates, until

the principal Sum of all and every such Note and Certificate shall be fully paid and discharged; but if it shall so happen that, at the Time when the said Sum or Sums of Money shall be demanded as aforesaid, there shall not be in the Hands of the said Treasurer a sufficient Sum of Money to satisfy and discharge the Sums due on the said Notes and Certificates, then, and in such Case, the said Commissioners for pitching and paving the said Streets, shall, and they are hereby authorized and impowered to borrow and receive from such Person and Persons as shall be willing and ready to lend and advance the same, all such Sums of Money as shall be requisite and necessary to pay and discharge such Deficiency or Ballance so remaining unpaid, to the Provincial Treasurer aforesaid; which said Lenders shall have and receive, for the Use and Forbearance of their respective Loans, until the same shall be paid off, Interest, not exceeding Six *per Centum*, yearly; and that the said Lenders shall have and receive a Note and Certificate in Writing of and for the Sum lent, with the Interest thereof, signed by the said Commissioners so borrowing the same, which said Note and Certificate shall be registered in a Book by them to be kept for that Purpose, and that the said Lenders shall be paid by the said Commissioners the Sum or Sums of Money of them respectively borrowed, with the Interest thereof, out of the Monies which shall arise, be collected and paid into the Hands of the said City Treasurer, in and by Virtue of this Act, and the Act to which this Act is a Supplement.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That all and every Person and Persons, to whom any Money shall be due on Account of the Loan last aforesaid, by Virtue of this Act, his, her, or their Executors, Administrators or Assigns, after such Note and Certificate shall be registered as aforesaid, may assign, transfer, and make over, by proper Words of Assignment,⁹ to be indorsed on his, her, or their Certificate, all his, her or their Right, Title or Interest of such Note and Certificate, to any other Person or Persons whatsoever; which Assignment shall entitle such Assignee or Assignees, his, her or their Executors, Administrators or Assigns, to the Benefit thereof, and Payment thereon; and such Assignee or Assignees, their Executors, Administrators or Assigns, may, in like Manner, assign the same again, and so *toties quoties*;¹⁰ and afterwards it shall not be in the Power of such Person or Persons, who hath or have made such Assignment, to make void, release or discharge the same, or the Monies thereby due.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That if a Sum of Money shall not be raised and levied in and by Virtue of the Act, to which this Act is a Supplement, before the Time limited

and appointed therein for the Expiration thereof, sufficient to pay off and discharge all and every the Sum and Sums of Money so borrowed, as is last herein before directed, or (if the same last mentioned Loans should not be found necessary) the Sum and Sums of Money so borrowed, as is herein first before directed, then, and in such Case, the said Act, to which this Act is a Supplement, and every Article, Clause and Thing therein contained, not herein and hereby altered, changed, amended, contradicted or repealed, shall be, and is hereby declared to be, and remain in full Force, Power and Virtue, until all and every the Sum and Sums of Money borrowed and received, in and by Virtue of this Act, shall be fully paid off, satisfied, and discharged, any Thing in the same Act to the contrary thereof notwithstanding.

AND WHEREAS, by the large Increase of Inhabitants of the said City, and the several Improvements made in Places and Pieces of Ground, which have been heretofore left open by the Owners thereof, and made use of in common for the Landing of Commodities brought to Market, the Landing-places and Wharffs belonging to the Public are found insufficient to accommodate the Persons who bring their Goods and Effects to be disposed of in the said City: AND WHEREAS there is a certain Piece of Ground and Water Course, commonly called and known by the Name of *The Dock*, extending from the River *Delaware* across *Front-street*, *Second-street*, and *Walnut-street*, to the *Third-street* in the said City, with a Street on each Side thereof, formerly granted by the late Honourable WILLIAM PENN, Proprietary and Governor of this Province, to the Inhabitants of the said City for public Use, which said Dock, for want of opening and cleansing, has heretofore proved a Nuisance, pernicious to the Health of the said Inhabitants; whereas, by a due Regulation thereof, the same may be made of public Use, and real Benefit to the Inhabitants of the said City; for Remedy whereof, BE IT ENACTED by the Authority aforesaid, That the said Commissioners shall and may, as soon as conveniently may be, after the Publication of this Act, out of the Monies which they are, so as aforesaid, authorized and impowered to borrow, purchase two convenient Lots for Landing-places on the River *Delaware*, one at or near each Side of the said City, for the Landing of Boards, Hay, and other Things, which may be brought from time to time to the Market of the same, for the Use of the Inhabitants and Citizens thereof; which said Lots, when so purchased, shall be vested in the Mayor and Commonalty of the City of *Philadelphia*, in Trust, nevertheless, to permit and suffer the Mayor, Recorder and Aldermen of the said City, with the Consent and Approbation of any four of the

Assessors thereof for the Time being, to take and receive the Issues, Profits and Tolls of the said Lots and Landing-places, and to dispose of the same, with the Concurrence of the Assessors aforesaid, for the Use, Benefit and Advantage of the Inhabitants of the said City, and for no other Use, Intent or Purpose whatsoever: And the said Commissioners are hereby further authorized and impowered to open, cleanse, repair, regulate, and make navigable the said Dock, and every Part thereof, in such Manner as to them shall seem most convenient, useful and advantageous to the Public, and for that Purpose shall and may contract and agree with such Person and Persons as they shall think proper, from time to time, to be employed under their Direction in the Premises, and generally to agree on, execute and perform all and every other Act, Matter and Thing which to them shall appear necessary for the effectual opening, cleansing, repairing, regulating and making the said Dock, and every Part thereof, navigable from time to time, and at all Times hereafter, during the Continuance of this Act, and to defray the Expence thereof out of the Monies so to be borrowed by them as aforesaid.

PROVIDED ALWAYS NEVERTHELESS, AND BE IT ENACTED by the Authority aforesaid, That the Owner and Owners of the several Lots of Ground adjoining to the said Streets, situate as aforesaid on each Side of the said Dock, shall, and they are hereby enjoined and required, as soon as conveniently may be, after the Publication hereof, to build and erect before the whole Front of his, her or their Lot or Lots, so adjoining the said Streets, a good strong substantial Wall, of good flat Stone, from the Bottom of the said Dock, of such Thickness, Height and Depth, as the said Commissioners, or a Majority of them, shall, by their Order in Writing, direct and appoint, at his, her or their own Costs, Charges and private Expence, unless it be in such Cases where the Front of any such Lot shall be situate at any of the Corners where the said Dock shall intersect any of the said Streets, and that in such Case the Owner of such Lot shall only erect so much of such Wall as shall be thought reasonable and just by the said Commissioners for paving the Streets aforesaid, or a Majority of them; and that the Residue of the said Wall, on the Fronts of the said Lots, shall be erected by the said Commissioners, out of the Monies so to be borrowed as aforesaid. And if the said Owners, or their Tenants, or any of them, shall neglect or refuse to build and erect the said Wall, in Manner aforesaid, for and during the Space of Three Months, after the Receipt of such Order and Direction in Writing, that then, and in such Case, the said Commissioners, or a Majority of them, shall build

and erect the same, and defray the Expence thereof out of the said Monies so borrowed by them as aforesaid; and shall recover the Money so expended of the said respective Owner or Owners, as is herein after directed.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the Sum and Sums of Money which the Commissioners for pitching and paving the said Streets are hereby authorised and impowered to borrow, shall be by them made use of, applied and appropriated to and for the Uses, Intents and Purposes mentioned and directed in and by this Act, and the Act of General Assembly to which this Act is a Supplement, and to and for no other Uses, Intents and Purposes whatsoever; and that the Sum and Sums of Money which the Governor of this Province for the Time being, and the Commissioners aforesaid, are hereby authorised and impowered to lend, when the same shall be repaid to the Provincial Treasurer, as aforesaid, shall be applied, disposed of, and appropriated by the same Persons, in the same Manner, and to the same Uses, Intents and Purposes, as if the same had never been lent, or this Act had never been made, any Thing herein to the contrary notwithstanding.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That if any Person or Persons shall, after the Publication of this Act, cast or throw down out of any Cart, Waggon or other Carriage, any Rubbish, Dirt or Earth, in any public Street, Lane or Alley of the City of *Philadelphia*, save only in such Parts and Places as shall be appointed and agreed on by the said Commissioners for pitching and paving the said Streets, every such Person shall forfeit and pay, for every such Offence, the Sum of *Five Shillings*, and pay the Cost of removing the same: And if any Person or Persons, save the said Commissioners, shall destroy, remove, or pull down any Bars, Chain, Rope or Fence, which the said Commissioners shall hereafter cause to be set up, in or across the said Streets, Lanes or Alleys, for the Preservation of the Pavements then newly made, or to be made, every such Person who shall offend in the Premises, shall forfeit and pay the Sum of *Twenty Shillings* for every such Offence.

AND WHEREAS some Doubts have arisen whether the Owners of Houses and Lots, before whose Fronts the Cart-way was paved, before the Passing of the said Act, to which this Act is a Supplement, were obliged and directed, by the same Act, to pave the Foot-way, and it is not therein appointed and ascertained with what Materials the said Foot-way shall be made and paved, nor at whose Expence the Gutters for carrying off the Water, and Posts for keeping off the Carriages,

shall be found, provided and set up; BE IT THEREFORE ENACTED by the Authority aforesaid, That the Owner or Owners, or the Tenant or Tenants of every House or Lot within the said City, before whose Front the Cartway has been at any Time before the Passing of this Act, or shall hereafter be paved, shall, at his, her or their private Expence, pave and repair the Foot-way, of such Breadth into the Street, with good sound well burnt Bricks, or good square flat Stone, and shall make, pave, repair, and amend the Gutters to the said Pavement belonging or adjoining, of such Width and Depth, and shall provide, find, and set up so many Posts of such Length, Form and Thickness, and of such Timber for keeping the Carriages off and from the said Foot-way, and in such Manner as shall be ordered and directed by the Mayor or Recorder, and four of the Aldermen, with any four of the said Commissioners for cleansing and paving the said Streets, under the Penalty of *One Shilling* for every Foot fronting his said House or Lot so neglected to be made, paved, amended or repaired, and *Two Shillings and Six-pence* for every Post so neglected to be set up: And in such Case the said Commissioners, or a Majority of them, shall make, amend and repair the said Foot-way, Gutters or Water Courses, and find, provide, and set up the said Posts, out of the Monies to be raised by Virtue of the Act to which this Act is a Supplement, and shall recover as well the Money so expended for the Purposes last aforesaid, as the Money expended by them in building and erecting the Walls aforesaid, with the Fines and Forfeitures aforesaid, of the Owner or Owners, if resident within the said City, or of the Tenant of such Owner or Owners, if they shall reside elsewhere, before the Mayor, Recorder, or any Alderman of the said City, in the same Manner as Debts, not exceeding *Five Pounds*, are, by Law, directed to be recovered before the Justices of the Peace of the respective Counties within this Province; and that the Sum or Sums of Money so expended by the Tenant, in and towards the Purposes aforesaid, shall be allowed by the Owner or Owners, out of such Rent as shall be then due, or shall thereafter become due, any Law, Usage or Custom to the contrary notwithstanding.

AND WHEREAS the paving the Streets of the City of *Philadelphia* will be attended with a great Expence to the Inhabitants thereof, and it is necessary that due Care be taken to preserve the Pavements, when made, from any and every avoidable and unnecessary Injury which may accrue from the Use thereof: AND WHEREAS nothing can be more destructive to Pavements of any Kind, and particularly to those newly made, than the carrying of large and excessive Weights

and Burthens in Carriages, the Fellies¹¹ of the Wheels whereof are of small Breadth, and narrow Dimensions, whereby the Stones of such Pavements are loosened and tore up, and the Pavements themselves, in a great Measure, ruined and destroyed; for Remedy whereof, BE IT ENACTED by the Authority aforesaid, That no Waggon, Wain¹² or Cart whatsoever, belonging to any Person or Persons whatsoever, residing or inhabiting within the said City of *Philadelphia*, or within the *Northern Liberties* thereof, or within the District of *Southwark*,¹³ or the Township of *Moyamensing* or *Passyunk*,¹⁴ shall travel, pass or be drawn on any of the paved Parts of the said City, from and after the First Day of *March*, in the Year One Thousand Seven Hundred and Sixty-four; with any greater Number of Beasts of Draught than three, if a four Wheel Carriage, and if a two Wheel Carriage, with any greater Number of Beasts of Draught than two, unless the Fellies of such Wheels shall be of the Breadth or Gauge of seven Inches from Side to Side at the least; and that from and after the First Day of *March*, which shall be in the Year of our Lord One Thousand Seven Hundred and Sixty-six, no such Wheel Carriage, belonging to Persons residing in the Places aforesaid, shall travel, pass or be drawn in the said City, with or by any Number of Oxen or Horses whatsoever, unless the Fellies of the Wheels thereof shall be of the Breadth or Gauge of Seven Inches from Side to Side at the least, Carts with one Horse, Stage and light travelling Waggon for Passengers only excepted; and that every Owner or Owners of such Wheel Carriage, which shall pass or be drawn in the said City, contrary to the Directions, Tenor, true Intent and Meaning of this Act, shall, for every such Offence, forfeit and pay the Sum of *Five Pounds*, to be recovered as Debts not exceeding *Five Pounds* are by Law directed to be recovered, or otherwise shall forfeit any one of the Beasts of Draught drawing such Wheel Carriage (except the Shaft or Thill Horse)¹⁵ together with all the Gears, Bridles, Halters and Accoutrements to such Beast of Draught belonging; one Moiety thereof to the Use of the Person or Persons who shall seize or distrain the same, and the other Half thereof to the Commissioners, to be applied for paving the Streets.

BE IT FURTHER ENACTED by the Authority aforesaid, That the Person or Persons making such Seizure or Distress, as aforesaid, shall deliver the Horse or Oxen, so seized and distrained, with the Accoutrements aforesaid, into the Custody of some one of the Constables of the said City; and every such Constable is hereby required to take and receive, and safely keep the same, till the Person or Persons

making such Seizure or Distress shall make Proof, upon Oath or Affirmation, before some Justice or Justices of the said City, of the Offence committed; and the said Justice or Justices, before whom such Proof shall be made to their Satisfaction, is and are hereby impowered and required to issue his or their Precept to such Constable, to sell and dispose of the Beast so forfeited, with the Accoutrements aforesaid, at public Auction or Vendue, first giving due Notice of such Sale, and to pay the Money arising from such Sale, one Moiety thereof to the Party or Parties so seizing or distraining the said Beast, and the other Moiety to the said Commissioners for paving the said Streets, after deducting thereout such reasonable Charges as the said Justice or Justices shall allow or direct: But in case no such Proof shall be made within Twenty-four Hours next after such Seizure, that then such Beast shall be returned to the Owner or Owners thereof, he or they paying such reasonable Charges as the said Justice or Justices shall allow and direct.

BE IT FURTHER ENACTED by the Authority aforesaid, That if any Person or Persons shall hinder or prevent, or obstruct the Measuring or Gauging of the Fellies of such Wheels, or the Seizing or Distraining of any Horse or Beast of Draught, hereby directed to be forfeited, or shall use any Violence to any Person or Persons who shall attempt to measure and gauge the said Fellies, or to seize or distrain such Beast as aforesaid, every such Person so offending shall, for every such Offence, forfeit and pay the Sum of *Ten Pounds*, being thereof legally convicted in any Court of Quarter Sessions of the Peace in and for the said City.

PROVIDED ALWAYS NEVERTHELESS, That if it shall appear that the Fellies of such Wheels were originally made of the full Breadth prescribed and directed by this Act, and to have become less by the Wear of long Usage, unless the same shall be less than Six Inches wide, the Penalties and Forfeitures hereby imposed on the Owner or Owners thereof shall not be incurred, nor the same recovered in Manner aforesaid, or in any other Manner whatsoever.

PROVIDED ALSO, That if any Person or Persons shall conceive him, her or themselves aggrieved, by any Judgment to be given by Virtue of this Act, if the same shall exceed the Sum of *Forty Shillings*, or the Value thereof, it shall and may be lawful for such Person or Persons, within the Space of Six Days next after the giving such Judgment, but not after, to appeal therefrom to the next Court of Common Pleas to be held for the said County, he, she or they first entering into Recognizance, with at least one sufficient Surety, in such a Sum as shall be suf-

ficient to answer the said Penalty or Value of the thing forfeited, together with all such Costs as shall be awarded to prosecute the said Appeal with Effect, and to abide the Order and Judgment of the said Court, which said Court is hereby authorised and required to accept and receive the said Appeal, and to proceed therein according to the Usage and Practice in Cases of Appeal for Debts above *Forty Shillings*, and not exceeding *Five Pounds*.

PROVIDED ALSO, That if any Person or Persons be sued or prosecuted for any Thing done in Pursuance of this Act, he, she or they may plead the general Issue, and give this Act, and the special Matter in Evidence, for their Justification; and if the Plaintiff, or Prosecutor, become Non-suit, or suffer a Discontinuance, or if a Verdict pass against him, the Defendant shall have treble Costs, to be recovered as in Cases where Costs by Law are given to Defendants.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That this Act shall continue and remain in Force for and during the Time limited in and by the Act to which this Act is a Supplement for the Continuance thereof, and for and during the Time herein before limited for the Continuance of the said Act, and no longer.¹⁶

ARGIII (1763), 227–37

¹ *Votes* (1763), 12.

² *Ibid.*, 17.

³ *Ibid.*, 18. See Act of March 26, 1762: 6 *SALP* 196–214.

⁴ *Votes* (1763), 23.

⁵ *Ibid.*, 24, 28.

⁶ *Ibid.*, 29.

⁷ See Act of March 26, 1762: 6 *SALP* 196–214.

⁸ Act of May 14, 1762: 6 *SALP* 226–29.

⁹ Assignment: “A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein” (*BLD*).

¹⁰ Lat. as often as is needed.

¹¹ *Fellies*: “The outer circular rims of wheels, or the curved wooden pieces used to construct them” (*OED*).

¹² *Wain*: “A large open vehicle, drawn by horses or oxen, for carrying heavy loads, esp. of agricultural produce; usually four-wheeled” (*OED*).

¹³ Southwark District was a municipality in Philadelphia Co.

¹⁴ Moyamensing and Passyunk Townships were south of Philadelphia.

¹⁵ The horse that stands between the shafts of a wagon or cart.

¹⁶ This act was referred to the King-in-Council on December 9, becoming a law by lapse of time (6 *SALP* 234–46).

To Mary Cadwalader Dickinson, March 7, 1763

Honour Mother,

I was very glad to have the Pleasure of hearing by Tom¹ that You & my Dear Brother were well— I am very hearty—& tho[ugh] the Circuit of Courts² has fatigued Me a little, yet I have been fortunate enough to meet with such Success, as makes a tolerable Reward for the Trouble—

Upon my Return to Town from Chester, I was engagd in the Assembly—which did not adjourn till last Friday—³ The Governor woud not pass a Bill We proposd to him for continuing the Indian Trade by Provincial Commissioners as it is now carried on by Virtue of an Act that will expire next April—⁴ His Objection was—That by the proposd Bill—the Proprietary Estate woud be taxd in common with others—contrary to the Determination of the King in Council—as the Governor alledgd⁵

The House did not chuse to recede from their Bill—⁶ But the People of this Town being a good Deal alarmd at the Apprehension of the Trade being discontinued, which it is supposd will greatly disgust the Indians—the Assembly have adjourn'd to the 28th of this Month—when I hope some other Mode will be found out for continuing this very important Act—⁷ I imagine there will be a good Deal of Opposition—as many People are more desirous of the Trade being unrestraind—than they are afraid of the Indians— But I think both Prudence & Good Faith require the Continuance of the present Act—which was calculated to preserve the Indians from the Impositions of the most infamous & extornionate Rascals who trade amongst them— And repeated Promises have been made to the Indians, that the Trade shall be carried on as it now is—

I have receivd the Honour of a new Office while I was in Kent— You'll smile at the Honour—chosen a Director of the Library Company—⁸

You'll be pleasd tho[ugh], when You know that the Choice is made by Men of Sense & Virtue—whose Approbation You have always taught Me to esteem a Blessing— I will always endeavour to practise all your Precepts—that whatever You hear about Me from the worthy may afford You Delight—& that I may enjoy the inexpressible Happiness of thinking that You receive Pleasure from the Conduct of your

most dutiful & most
affectionate Son

John Dickinson

Philad[elphi]a March 7th—1763

Please to give my Love to my Dear Brother—to my worthy Friend M^r. Wilson & our Neighbours— Uncle Cadwalader's Family⁹ & Uncle Morris's are well—¹⁰

ALS (PHI-MDL)

¹ Possibly a Dickinson slave.

² The Court of Quarter Sessions was held at Cumberland on Jan. 18; York on Jan. 25; Lancaster on Feb. 1; Reading on the Feb. 8; and Chester on Feb. 22. The Court of Common Pleas met at Lancaster and Sussex on Feb. 1; Kent on Feb. 8; New Castle on Feb. 15; and Chester on Feb. 22. See *Mr. Weatherwise's Pocket-Almanac, (On an entire New PLAN.) For 1763* (Philadelphia: W. Dunlap, [1762]), [18–19].

³ The Pennsylvania Assembly adjourned on March 4.

⁴ On Jan. 19, the House addressed the fact that the April 8, 1758, law passed to prevent abuses in the Indian trade and its 1759 supplement were set to expire on April 8, 1763. The members considered whether such a law should be continued. On Jan. 28, the Commissioners for Indian Affairs recommended continuance. Accordingly, “An Act for Preventing Abuses in the Indian Trade” was read for the first time on Feb. 12. See 5 *SALP* 320–30, 396–400; *Votes* (1763), 13, 17, 25.

⁵ See Lt. Gov. James Hamilton's message, read to the Assembly on March 2. The next day a committee met with Hamilton to try to resolve their differences. See *Votes* (1763), 32–34.

⁶ The House rejected the revised bill with the governor's amendments. See *Votes* (1763), 34.

⁷ After the Assembly reconvened, the appointed committee offered a new Indian trade bill on March 30. Although it was amended by the governor, the Assembly accepted his change, and the bill was approved on April 2. See *Votes* (1763), 39–41; 6 *SALP* 283–93.

⁸ The Library Company of Philadelphia, America's first lending library and oldest cultural institution, was founded by Benjamin Franklin in 1731. It was managed by a board of directors in concert with a head librarian. Directors' responsibilities included admitting new members and selecting books.

⁹ Dr. Thomas Cadwalader and Hannah Lambert Cadwalader, and their sons, John (1742–1786) and Lambert (1742–1823), and daughter Mary (1744–1791) lived in Philadelphia. John and Lambert became successful merchants and active supporters of the American Revolution.

¹⁰ Samuel Morris (1711–1782) and JD's maternal aunt, Hannah Cadwalader Morris (1715–1787), and their children, John Cadwalader (1739–1785), Cadwalader (1741–1795), Samuel Cadwalader (1743–1820), Anthony Cadwalader (1745–1798), Phebe (1747–1785), Martha (1749–1787), Thomas (1753–1829), and Benjamin (1760–1841).

Sir

I have this longest Winter flattered my self that I should have had a visit from you; but as the Roads are now almost impassable I give over all hopes of seeing you till Summer.

I must beg the favour you'll let me know if you have settled all our family Affairs that you have in your hands, & to know if you have received the Interest of the money from Messrs Goodman and Reid:² This I shall want with the £40 for the Summers Rent of the Plantation, to discharge Billys Colledge³ Expences which are upwards of £30; and the overplus must be sent by me to my Mother as I dare say by this time she must want Money

I am thinking of sending Josey to the School of Burlington⁴ the Master has a good Character, especially as to writing, I am afraid Billy has lost his time at Prince-Town, I am indeed at a loss to know how to dispose of him, & he is now of an age, that should point out where his Inclinations would lead him to.

S[*i*]r John got a Letter from my graceless Brother Tom⁵ dated from New York Jail, he writes to him as {if} he expected relief from us which he can never expect from my fathers will⁶ nor his own behaviour, he says he is confined by M^r. Merydith⁷ on Account of drawing Bills from Providence, I hope M^r Merydith knows he is to expect nothing from this quarter; and what little Mama can give him will go but little way to support his Extravagence.

When you write to M^{rs} Dickinson be so good as to send her our best Compliments and be assured that I am with a true and sincere Regard

S[*i*]r your Most obedi{e}nt sarvant
Eliz.^a S^t. clair.

ALS (PHi-Logan)

¹ Belleville, Essex Co., N.J.

² On Sept. 13, 1762, JD had received £12 from "Cap^l. Goodman for Interest on his Bond." On June 15, 1763, he received £24 from "James Read Esq^r: it being 4 years Interest on his Bond" (PHi-Logan). The bond was probably from James Read (1718–1793), of Reading, Pa., at this time prothonotary, register, recorder, and clerk of Berks Co. courts, and later a member of the Supreme Executive Council of Pennsylvania. See Morton L. Montgomery, *History of Berks County in Pennsylvania* (Philadelphia: Everts, Peck & Richards, 1886), 558.

³ Elizabeth's brother William Moland attended the College of New Jersey, now Princeton University, but did not graduate. JD received the rent for 1762 in two parts. For the first, see doc. 2:41, n. 1, above. On Dec. 29, he received £36 from Thomas Masterman and "Flounders," and he paid Catherine Hutchinson Moland the "overplus" of £10 on March 19, 1763 (PHi-Logan).

⁴ Possibly the free school on Mantinicum Island in the Delaware River, which was owned by the town of Burlington, N.J., and which had been set aside for educational purposes by the Quaker West Jersey Assembly in 1682. See Edwin Grant Dexter, *A History of Education in the United States* (New York: Macmillan Co., 1906), 63.

⁵ Thomas Moland (1740–1780), Elizabeth’s second eldest brother, was in debtors’ prison.

⁶ John Moland’s will conditioned his bequest to his wife on the requirement “that She doth not Converse with her Son Thomas, to whom I leave One Shilling only” (Bucks County Wills, 3:51, Bucks Co. Courthouse, Doylestown, Pa.).

⁷ Merydith might have been the lone creditor among several who refused to issue Moland a letter of license, which would have freed him to work off his debts. See Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, Mass.: Harvard University Press, 2002), 69.

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To John Baynton and Samuel Wharton, May 6, 1763

Gentlemen,¹

M^r. Philips has lately laid before Me a Policy subscribd by You, on which I understand some Difference has arisen between You— As the Matter is merely mercantile, I apprehend it might be most properly & easily settled by some Merchants mutually chosen— That Method will be very agreeable to M^r. Philips, and he woud be glad to know if You approve of it—

I am, with great Regard
Gentlemen,
your very h[um]ble Serv[an]t
John Dickinson²

May 6th—176[3]

ALS (PCarID)

¹ The mercantile firm of Baynton & Wharton was established in 1757 as a partnership between John Baynton and Samuel Wharton. The firm became Baynton, Wharton, & Morgan in 1763 when Baynton and Wharton partnered with their clerk and Baynton’s son-in-law, George Morgan (1743–1810), who had inherited a substantial amount from his father. Even before the partnership expanded, it was one of the most extensive concerns in the colonies, engaging in both domestic and foreign trade. Within the colonies, the firm dealt in agricultural products. Its foreign trade consisted of products such as sugar, rum, and gunpowder. Despite difficulties during the French and Indian War, the firm established a virtual monopoly in Ohio and Illinois Countries. After the war, increased competition and various other factors hurt its profits, and by 1776, it was dissolved. But the compensation to traders in the 1768 Treaty of Fort Stanwix allowed Baynton, Wharton, & Morgan to form what became the Indiana Company to exploit Ohio lands. See “Sequestered Baynton, Wharton, and Morgan Papers,” PHarH;

Morris K. Turner, "The Baynton, Wharton, and Morgan Manuscripts," *MVHR* 9, no. 3 (1922): 236–41.

² JD addressed this letter: "To / Mess^{rs}. Baynton & Wharton." Baynton and Wharton endorsed it: "John Dickinson."

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From William Allason, May 21, 1763

As one of the few lengthy strings of professional correspondence from JD's early years, this series of letters represents the sort of work JD did for individuals in various parts of British North America. In May 1763, after working with Joseph Galloway from as early as 1759, Virginia businessman William Allason requested JD's assistance regarding a suit against William Green, who then lived in Wilmington, Delaware.¹ Allason had purchased a debt in the amount of £300 from the estate of Captain Thomas Rodgers in Falmouth, Virginia, sometime in 1759, owed by Green and some of his business associates, including a William Dickenson and company. While Allason attempted to obtain payment of this debt between 1759 and 1762, several complications occurred, resulting in countersuits filed against him in Maryland and Delaware. After numerous postponements and an arbitration, JD obtained a judgment against Green in 1767 and another against Green's security, Allen Gillespie, but collection remained difficult. At some point JD was able to send £300 in Pennsylvania currency, but Allason was still seeking to collect the remaining debt from Gillespie twenty years later. The correspondence concerning the intricate circumstances surrounding the suit and countersuits involved in the case spans 1763 to 1785, when Allason, aware of JD's responsibilities as president of Pennsylvania's Supreme Executive Council, apparently sought another attorney to oversee his collection efforts.² A long list of actors and witnesses participated in various aspects of the pursuit of Green. The suit shows merchants' complex economic, political, judicial, and personal relationships in the mid-Atlantic colonies, and gives a sense of JD's early reputation throughout the region.

Philadelphia 21st may 1763

Sir³

It may be Necessary that I give you a history of that Bill of Exchange for 300£ Sterling dated 28th October 1758 drawn by William Dickenson on John Smith in Bristol in favor of William Green⁴ now of Wilmington for which an Action was brought against him a few

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days ago in New-Castle Court— Capt[ain] Thomas Rodgers⁵ in his Life time bought the Bill of Dickenson at williamsburg in Virginia on this condition that Green indorsed it for which the said Rodgers paid the value in the Current{c}y of the{at} Colony, the Bill was property Negotiated at home but before that it came back Rodgers had advice of its being noted for Non acc{e}ptance about which time the drawer Eloped from Virginia— Rodgers thinking the value of his Bill in danger of b{e}ing lost came immediately to this City expecting to find the drawer as well as the endorser but to his great su{r}prise found that Green was gone to the Northward with Dickenson and expected they were both Runaway on which he had the Effects of Green at wil-mington Attached for the Payment of this Bill, befor that this cou'd be brought to a Period in New-Castle Court Rodgers died by which the Action ceased as appears by Greens Letter to the administrator making offers to discharge it rather the another Suit shou'd be brought— In the mean time M^r Andrew Sp{r}owle⁶ of Norfolk in Virginia and my self had some Connections with John Buttler⁷ the Administrator on Rodgers Estate by which this Bill came into our hands—at William-burg in Virginia when we got an assignation of this Bill from the ad-ministrator was informed that Green the endorser, from whom we de-pended on getting payment, was then at Portobacco in Maryland,⁸ on which I made the best of my way thither, in order to get it settled then or to arrest him in that Province for the conveniency of my attending that Court in preference to that of New Castle, as this last is at much greater distance from my home—

I found him at Portobacco when he proposed selling me a Negroe Boy at 30£ sterling— which he had a few days before bought in that Town, he said for the same money. After seeing the Boy agreed to allow him that Sum for him, tho[ugh] dear enough, which shou'd be dis-counted out of the Bill at Settlement— A Piece of Greens behaviour on this Occasion I cannot help taking notice of, by which you may know the inclination he had to pay his Debts, this same Negroe Boy immediately after he had purchased him he ordered to a friends house 2 or 3 miles from the Town, whither Green and I went to see him before that I agreed for him—

After that I had agreed for him we ordered the Boy to Town to the Gent[lema]ns house from whom Green bought him, who was my friend, and there to stay as my property till I cou'd get him carried from thence— In our way from this friends house of M^r. Greens we called at one M^r. J[ohn] Hanson's⁹ who we made acquainted with our Business, and who informed us that he was then preparing to set out

for Philadelphia next day and wou'd be glad of our Company as farr as George Town in Kent County¹⁰ where Green proposed giving me sufficient security for the Bill and damages, provided I wou'd go there with him which I very readily agreed to, after that point was settled between M^r. Hanson & us, Green and myself went to Portobacco about some private Business each of us had there, Green doubting of my promise and afraid that I wou'd have him arrested at Annapolis thought proper to take his horse out of the Stable without my knowledge and go of[f], by this time the Negroe Boy had got near the Town agreeable to the orders we had given him, when Green met him and ordered him back to someplace or other, probably to the house he had just come from, I suppose with a view that I might not find him— Soon after Green went off had occasion to go the Tavern and found that he was gone, when I immediately ordered my horse and went down the road which I expected he had taken, before that I had gone farr overtook the Boy going the road he had just before come, and informed me that Green had ordered him so to do, on this I had the Boy secur'd with my friend at Portobacco, and again set out expecting to overtake Green but to no purpose— When I found that Green had tricked me in this manner I judged that it might be Necessary to go to Annapolis where I took out two Writts¹¹ for the Countys of Kent & Cecill through which I expected he wou'd pass on his way home, however he escaped both at that time but some time after having Occasion to come down into Cecill it seems he was taken—

You'll first Observe that the Writts were not Accompanied with a Declaration¹² which it seems was Necessary when the Sum is considerable, and for want of it the Sherriff¹³ only took a common security which it seems is only 7000. w[eigh]t Tobacco for which the Sherriff is now imersed as Green did not appear to the Action, am also informed that Greens Security will not be Obliged to Pay Tobacco to the Sherriff unless that he is a Tobacco Planter and makes that quantity and incase of Greens Security not being a Tobacco maker has the liberty of Paying of[f] the Tobacco at the rate of 1½d [per] w[eigh]t Maryland Currency, which when Rece[ive]d must be discounted out of the Bill, as well as the Negroe Boy 30£ sterling, of which I shall inform you further before that the Suit is determined— It was about the 7.th Nov[embe]r 1760 when I bought the Negroe Boy of Green, and in a few days after the Provincial Writts were issued which he was taken with, the Gent[leman] M^r Thomas Johnson Jun^r.¹⁴ at Annapolis was the Person who had the Care of this Suit in Maryland, and who said he wou'd immediately send a Declaration to the Sherriffs of Kent & Cecill who

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had the Writts, which he never did till about 2 Months ago, in expectation that Green might be taken before the last Provincial Court, which it Seems cou'd not be done— As this Bill has lain by in this manner for 2½ years by M^r Johnson's most extraordinary Neglect, am in hopes it will be of no prejudice to this present Suit in New Castle Court— The above is what I at present recollect of this Bill if any other papers are wanting [*illegible*]{R}elative to it please inform me As soon as you discover it that I may have time to procure them and send them to you before they are wanted in Court—

I informed you that Green had Arrested me in New Castle County for £1000 damages, what he means by this I don't know unless it be from a motive of putting me to all the inconveniency, as a stranger there, that he cou'd— He may probably in order to put the best face he can on this Action of his alledged that he has sustained damages by my having sued him some time ago, expecting to subject him to the payment of a Debt due me by William Dickenson & Co[mpan]y as a Partner of theirs, in that Suit I certainly had just cause of Action which I hope will appear so to you when the Papers on which that Action was founded comes to hand, which shall be sent you from Annapolis where they now are— I must intrust you to forward my Action against Green for the Bill as much as possible, and to be particularly carefull that sufficient security be taken for by what I can understand his circumstances are much impair'd of late by Losses in Trade which he is not well acquainted with— I will esteem it a particular favour, if you will at all times when any thing New in these Affairs Occurs inform me by Post and direct for me at Falmouth Rappa[hannock] River Virginia— I shall leave a Power of Attorney with M^r Robert Ritchie¹⁵ to Authorise him to do any thing that is Necessary in my absence[.] I am

Yours &c
WA¹⁶

NB After Green left me in the scandalous manner as above, I left the Negroe Boy at Portobacco for several Weeks, in which time Green sent a Man into Maryland in order to carry the Boy off[f], the Gent[lema]n in whose custody he was wou'd not deliver him till I came there which he understood from one of my Neighbours wou'd be next day, when he might talk to me about it, but this same Person never appeared before me to acquire the Boy, tho[ugh] I came there at the time expected, and staid all night & great part of next day, and he at the same time in the Neighborhood.—

Lc (Vi-Allason)

¹ Joseph Galloway to Allason, May 5, 1759, Vi-Allason.

² Hugh Thomson to Allason, July 10, 1787, Vi-Allason; Allason to Moses Levy, April 19, 1785, Vi-Allason.

³ Allason entered an internal address on this letter: "M^r John Dickeson."

⁴ William Green (died c. 1770) was a merchant who later moved to New Bern, N.C. According to documents gathered by George Pitt, William Dickenson, John Smith, and William Green were aliases for William Fewster, John Price, and William Barker, respectively. The three men adopted the names when they came from England to Virginia in 1754, formed a partnership, and opened a store in Williamsburg, Va. Smith (Price) returned to England and remained there in 1769, when he gave a deposition on the subject for Pitt. Green (Barker) had at least one and possibly three wives in England when he married Sarah Packe at Williamsburg in late 1754 or early 1755. See Webb-Printis Family Papers, ViU

⁵ Thomas Rodgers (died c. 1759), of Dinwiddie Co., Va., was a merchant.

⁶ Andrew Spowle (c. 1714–1776) was a British merchant, navel agent, and Virginia landowner. He founded the Gosport Shipyard in 1767, now the Norfolk Navy Yard. He died in exile on Gwynn's Island, Mathews Co., Va.

⁷ Rodgers's widow, Martha Rodgers, relinquished administration of his estate in December 1759, and John Butler, a merchant, was appointed in 1760 to administer it. See New Castle Misc. Wills, vols. 1–2, De-Ar; Register of Wills, Oct. 31, 1760, De-Ar.

⁸ Port Tobacco, Charles Co., Md., was a prominent seaport in 18th-cent. Maryland.

⁹ John Hanson (1721–1783), born in Port Tobacco, was a wealthy planter and merchant. He represented Charles Co. in the Maryland Assembly in the 1760s and Frederick Co. in the 1770s. He was active during the Revolutionary War, providing major financial support and serving as a delegate to the Continental Congress. He was president of the Congress from November 1781 to November 1782.

¹⁰ Georgetown, Kent Co., Md., is on the border with Cecil Co., Md.

¹¹ Possibly a writ of mandamus, a court order requiring another government entity, organization, or person to act.

¹² Possibly like an affidavit in support of the abovementioned writs of mandamus.

¹³ George Mulligan was the sheriff of Cecil Co. in 1760.

¹⁴ Probably Thomas Johnson, Jr. (1732–1819), a lawyer and delegate to the provincial Assembly from Anne Arundel Co. Johnson later became a delegate to the Continental Congress, governor of Maryland, and a US Supreme Court justice.

¹⁵ Robert Ritchie (fl. 1758–1784) was a Philadelphia merchant.

¹⁶ William Allason (c. 1729–1800) was a businessman who conducted numerous mercantile transactions in Falmouth and Winchester, Va., along with his brother, David Allason (c. 1736–1815). The Allasons maintained business relationships with prominent figures in Virginia and the mid-Atlantic region; for example, they acted as primary agents for Thomas Fairfax, sixth lord Fairfax of Cameron (1693–1781). The Allasons often purchased debts, sold slaves on behalf of their owners, and performed several varied and extensive trade and business services, in addition to operating several stores and a sawmill.

May 1763

72

From Nicholas Van Dyke, May 25, 1763

St. Georges May 25th— 1763—

Dear Sir¹

I have sent £41¹²/₂ by the Bearer hereof David Vandike² with orders to p{b}e paid to you for the Law Books I purchasd of you,³ which is the amount of their several Prices agreeable to the inclosed List.⁴

upon looking over & examining my Books I find I have one among them, (to wit the Conveyancer's Guide & Assistant, by Giles Jacob,⁵ a small Book) which is not mentiond in the said List, I suppose M^r. Porter & I overlook't it by some Means in Packing them up,— not knowing the Price I have not sent the Money for it, but will satisfie you for it the first time I shall have the Pleasure of seeing you—⁶ if you please to make a Memorandum of it's Price, I beleive it is priced in the old List which you have— Please to give the Bearer a Receipt for the above Sum for Law Books on my Account—⁷

please to send me your old Coke on Littleton⁸ by the Bearer, desire M^r. Porter to wrap it up in brown Paper & direct it to me, I shall satisfie you for it, or return it safe with many Thanks when supplied with another,

{D[ea]r S[i]r} that you may be bless'd with Health, Happiness & a Reparation of your weak & tender Constitution, (the Consequence of which in all human Probability will be the Continuation of a Life which I have the greatest Reason to judge will be not only beneficial to Individuals, but very valuable to Society & the Publick in general) is the sincere Desire of

Your oblig'd Friend
& H[um]ble Serv[an]t—
Nich.^s Vandike⁹

ALS (PHi-Logan)

¹ Writing from St. Georges Hundred, New Castle Co., Del., Nicholas Van Dyke (1738–1789) was preparing to be admitted to the Pennsylvania bar, which took place in 1765. He later became a statesman who served in the Delaware Assembly, the Continental Congress, and as president of Delaware.

² Possibly David Van Dyke (d. 1798), of St. Georges Hundred, who operated a ship around this time.

³ Van Dyke was purchasing law books from John Moland's estate, and JD received his payment on June 6. See PHi-Logan.

⁴ See "A List of Law Books bo[ugh]t of Jn^o. Dickinson Esq^r," May 1763, PHi-Logan.

⁵ Giles Jacob, *The Grand Precedent: or, the Conveyancer's Guide and Assistant* (London: E. Nutt, 1716).

⁶ JD received Van Dyke's payment of eight shillings nine pence on Dec. 16 for "Jacobs Grand Precedent." See PHi-Logan.

⁷ Receipt not found.

⁸ That is, 1 Coke, *Institutes*.

⁹ Van Dyke addressed this letter: "To / John Dickinson Esquire / In / Second Street / Philadelphia."

73

From William Allason, May 26, 1763

Annapolis 26.th may 1763

Sir

I refer to mine of the 21st.¹ wherein I mentioned that the Letters of Administration for John Buttler on Thomas Rodgers Estate was here which I now send you from hence properly Authenticated by the Governor² & Seal of the Colony of Virginia which I hope will answer the purpose by having brought the Suit in Buttlers name[.] I hope there will be nothing more wanting with respect to the Bill, if there shou'd, please inform me— When I returned to New Castle was informed by Capt[ain] Clay³ that Green had been there, and was making very free with my Character, amongst the rest informed him that I had Stole a Negroe from him on the road for which he expected wou'd make me pay severely, this may probably be the principal Grounds of his Action against me— I have already said a good deal concerning that Boy, which was by Accident that I mentioned it at all, for I never in the least suspected that he wou'd alledge damages on that Score— As I believe my friend M^r. Green is capable of doing and saying many things which are not consistent with truth &c, he may Perhaps alledge that this same Negroe Boy was of considerable value &c, if you are apprehensive of this being the case I can very easeyly obtain from the Gentleman in Portobacco an Acco[un]t of the Sum which Green paid for the Boy, also how much the Boy cost the Gentleman from whom Green bought him, likewise how long he was the property of each & of his size &c which I hope wou'd sufficiently Ascertain the value of him—

I likewise send you the Cobby of William Dickenson's Invoice Book,⁴ which you did not take much notice of when it appeared in your Court before—the very first 3 Lines I hope will satisfie you that the Goods there mentioned belonged to Dickenson & Co[mpan]y and that Green in justice shou'd have been subjected to the payment of the

July 1763

Debt I had ag[ain]t that Company— When Dickenson had begun to
t{E}nter the Acco[un]t of the Goods in that Book, you'll observe the
title was too plain and not of a piece with the scheme then on foot
therefore draw'd his pen through it, that it might not be understood,
in short every one of the titles to the three different Cargoes, therein
mentioned says that the Goods were the Property of William Dickenson
& Co[mpan]y & not of Green alone, and surely every unprejudis'd
person must be of the same opinion[.] I am

Yours &c
WA

Lc (Vi-Allason)

¹ Doc. 2:71, above.

² Francis Fauquier (1703–1768) was lieutenant governor of Virginia from 1758 to 1768. He acted as governor in the absence of John Campbell, fourth earl of Loudoun, and Maj. Gen. Jeffery Amherst, the appointed governors during that period.

³ Perhaps Slator (Slater) Clay (1711–1767), originally a ship captain at Philadelphia and later an innkeeper at New Castle, Del. In 1740, he married Ann Curtis (1723–1789), daughter of Jehu Curtis (1692–1753), who represented New Castle Co. and later became the speaker of the Delaware Assembly, judge of the Delaware Supreme Court, and treasurer of the Loan Office.

⁴ Not found.

74

JD et al., “An Act for Regulating the Officers and Soldiers in the Pay of this Province,” July 8, 1763

Immediately after the conclusion of the French and Indian War, another war between colonists and Indians began on May 7, 1763, with an attack on Fort Detroit in the Ohio Country. Confusion and fear gripped western Pennsylvania once again as Forts Venango, Le Boeuf, and Presque Isle in the far northwest of the province fell to Pontiac's confederacy by June 1763. Lieutenant Governor James Hamilton called the Assembly back into session on July 4, assuring the members that “nothing less than the most urgent Necessity, and an immediate Want of your Assistance for the public Safety, could have induced me to call you together before the Time to which you stood adjourned.”¹ On July 6, the Assembly recommended “to the Governor and the Provincial Commissioners to take into the immediate Pay of this Province any Number of the Back Inhabitants, and others, not exceeding Seven Hundred Men” to provide protection during the harvest.² The Assembly agreed that an act should be passed “for the better Regulation of the Troops” they had just raised, and appointed JD, John Hughes,

Plunkett Fleeson, Henry Cruson, John Morton, Isaac Wayne, David McConaughy (c. 1717–1815), and John Moor to a committee to draft a bill.³ The committee submitted a draft on the morning of July 7, and the Assembly passed it in the evening. Hamilton signed it the next day.⁴

An ACT for regulating the Officers and Soldiers in the Pay of this Province.

WHEREAS many barbarous Hostilities have lately been perfidiously committed by the *Indians*, on the Western and Northern Frontiers of this Province; and there is great Reason to apprehend that a Confederacy has been formed, among several Tribes of the said *Indians*, to continue and extend their Incursions, and, by the cruellest Murders and Devastations, to spread Destruction through this Province: AND WHEREAS it is judged necessary that a Body of Forces, not exceeding Seven Hundred Men, exclusive of those already in the Service of the Government, should be taken into the Pay of this Province, to be divided, stationed and employed in protecting the Frontier Inhabitants, within the purchased Parts of the said Province, during the Time of Harvest, or until the next Meeting of the General Assembly. AND WHEREAS no Man can be forejudged of Life or Limb, or subjected in Time of Peace to any Kind of Punishment within this Province, by martial Law, or in any other Manner than by the Judgment of his Peers, and according to the known and established Laws of this Province; yet, nevertheless, it being requisite, for the retaining such Forces in their Duty, that an exact Discipline be observed, and that Offenders be brought to a more exemplary and speedy Punishment than the usual Forms of the Law will allow, BE IT THEREFORE ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor, under the Honourable *THOMAS PENN*, and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That from and after the Publication of this Act, if any Person who is, or shall be hereafter, during the Continuance of this Act, mustered, or in the Pay of this Province, as an Officer; or who is, or shall be hereafter, during the Continuance of this Act, listed, voluntarily entered, or in the Pay of this Province, as a Soldier, shall, at any Time during such Continuance of this Act, begin, excite, cause, or join in any Mutiny or Sedition in the Company, Troop or Regiment, whereto

he doth belong, or in any other Company, Troop or Regiment, in His Majesty's Service; or shall not use his utmost Endeavours to suppress the same; or coming to the Knowledge of any Mutiny, or intended Mutiny, shall not, without Delay, give Information thereof to his Commanding Officer; or shall desert His Majesty's Service; or being a Soldier, actually listed in any Regiment, Troop or Company, shall list himself in any other Regiment, Troop or Company, without a Discharge produced in Writing from the Colonel, or, in his Absence, the Field Officer commanding in Chief the Regiment, Troop or Company, in which he last served as a listed Soldier; or shall be found sleeping upon his Post, or shall leave it before relieved; or if any Officer or Soldier of the said Forces shall hold Correspondence with any of said *Indians* who have been concerned in the Hostilities lately committed, or that shall hereafter be committed, within this Province, or with any Person who has assisted, or shall hereafter assist the said *Indians*, in committing such Hostilities, or give them Advice or Intelligence, either by Letters, Messages, Signs or Tokens, in any Manner or Way whatsoever, or shall treat with such *Indians* or Persons, or enter into any Condition with them, without His Majesty's Licence, or Licence of the General, Lieutenant-General, or chief Commander; or shall strike or use any Violence against his superior Officer, being in the Execution of his Office; or shall disobey any lawful Command of his superior Officer; all and every Person and Persons so offending, in any of the Matters before mentioned, shall suffer Death, or such other Punishment as by a Court-martial shall be inflicted.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the Governor, or Commander in Chief of this Province for the Time being, may, from time to time, grant a Commission, under the Great Seal, to any Officers, not under the Degree of a Field Officer, for the holding a General Court-martial within this Province; in which Courts-martial all the Offences in this Act specified shall be tried and proceeded against, in such Manner as by this Act shall be hereafter directed.

AND BE IT ALSO FURTHER ENACTED, That it shall and may be lawful to and for such Courts-martial, by their Sentence or Judgment, to inflict corporal Punishment, not extending to Life or Limb, on any Soldier, for Immoralities, Misbehaviour, or Neglect of Duty.

AND IT IS HEREBY FURTHER ENACTED AND DECLARED, That no General Court-martial, which shall have Power to sit by Virtue of this Act, shall consist of a less Number than Thirteen,

whereof none to be under the Degree of a Commission Officer; and the President of such General Court-martial shall neither be the Commander in Chief, or Governor of the Garrison where the Offender shall be tried, nor under the Degree of a Field Officer, unless where a Field Officer cannot be had, in which Case the Officer next in Seniority to the Commander, not being under the Degree of a Captain, shall preside at such Court-martial; and that such Court-martial shall have Power and Authority, and are hereby required, to administer an Oath to every Witness, in order to the Examination or Trial of any of the Offences that shall come before them.

PROVIDED ALWAYS, That in all Trials of Offenders by General Courts-martial, to be held by Virtue of this Act, every Officer present at such Trial, before any Proceedings be had thereupon, shall take the following Oaths upon the holy Evangelists, before the Court and Judge Advocate, or the Person officiating as such (who are hereby authorized to administer the same) in these Words; that is to say,

YOU shall well and truly try and determine, according to your Evidence in the Matter now before you, between our Sovereign Lord the King's Majesty, and the Prisoner to be tried: So help you GOD.

I A. B. do swear, That I will duly administer Justice, according to an Act of the General Assembly of this Province, now in Force, intituled, "An Act for regulating the Officers and Soldiers in the Pay of this Province," without Partiality, Favour or Affection; and if any Doubt shall arise, which is not explained by the said Act, according to my Conscience, the best of my Understanding, and the Custom of War in the like Cases. And I further swear, that I will not divulge the Sentence of the Court, until it shall be approved by His Majesty, the General, or Commander in Chief of this Province; neither will I, upon any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof, as a Witness, by a Court of Justice, in a due Course of Law: So help me GOD.

AND so soon as the said Oaths shall have been administred to the respective Members, the President of the Court is hereby required and authorized to administer to the Judge Advocate, or the Person officiating as such, an Oath in the following Words:

I A. B. do swear, That I will not, upon any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless required to give Evidence thereof, as a Witness, by a Court of Justice, in a due Course of Law: So help me GOD.

AND no Sentence of Death shall be given against any Offender in such Case by any General Court-martial, unless Nine Officers present shall concur therein; and if there be more Officers present than Thirteen, then the Judgment shall pass by the Concurrence of two Thirds of the Officers present. And no Proceeding or Trial shall be had upon any Offence, but between the Hours of Eight of the Clock in the Morning, and Three in the Afternoon, except in Cases which require an immediate Example.

PROVIDED ALWAYS, That the Party tried by any such Court-martial, shall be intitled to a Copy of the Sentence and Proceedings of the said Court, upon Demand thereof made by himself, or any other Person or Persons in his Behalf (he or they paying reasonably for the same) at any Time not sooner than Three Months after such Sentence.

PROVIDED ALSO, That every Person presiding at any Trial, whereupon Sentence of Death shall be given against any Officer or Soldier, by Virtue of this Act, shall transmit, as soon as conveniently may be, to the Governor, or Commander in Chief of this Province for the Time being, a fair Transcript of the Proceedings and Sentence of such Court-martial, under the Hands and Seals of the Officers who composed the said Court; and that the Execution of the Sentence so given shall be suspended, until the Pleasure of the Governor, or Commander in Chief of this Province for the Time being, be known, and his Warrant for the same, under the Great Seal, shall be received.

PROVIDED ALWAYS, AND BE IT FURTHER DECLARED AND ENACTED, That no Officer or Soldier, being acquitted or convicted of any Offence, be liable to be tried a second Time, by the same, or any other, Court-martial, for the same Offence, unless in the Case of an Appeal from a Regimental to a General Court-martial; and that no Sentence given by any Court-martial, and signed by the President thereof, be liable to be revised more than once.

PROVIDED ALWAYS, That nothing in this Act contained shall extend, or be construed to exempt any Officer or Soldier whatsoever, from being proceeded against by the ordinary Course of Law.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That this Act shall be and continue in Force until the Twentieth Day of *September* next, and no longer.⁵

ARGIII (1763), 282–86

¹ *Votes* (1763), 43.

² *Ibid.*, 46.

³ *Ibid.*, 47.

⁴ *Ibid.*, 47.

⁵ This act was never submitted for the Crown's consideration; see 6 *SALP* 297–301.

75

To Unknown, August 24, [1763]

Dear Sir,¹

My Heart gratefully acknowledges the affectionate Remembrance You preserve of your Friend, and is pleas'd to find so just a Return to the Sentiments it intertains for You— Indeed, nothing will ever diminish the Love I have for You, however negligent I may appear in paying the “Tribute” which is most deservedly your due—

I am very sorry that I mist the Opportunity of paying my Compliments to M^r. Clarke, when he past thro[ugh] Town, by being in the Country— Nor can I hear whether that Gentleman is yet return'd— If he is not, I hope I shall see him, [*illegible*]— And I will endeavour to make his Stay here as agreeable as I can—

Tho[ugh] I have not often the Favour of a Letter from You, yet I frequently have the Pleasure of hearing of your Health & Success— Your Heart can tell You what I feel on these Occasions—

You may be sure, I am willing to have it known, how dear We are to each other—because it gratifies a generous Kind of Vanity—to which I believe the best Minds are subject— And if a Man under the Notion of Friends being but One, can pilfer Part of a shining Character, it appears to Me a justifiable Theft—

But will You not sacrifice Health to Reputation? I fear You will— Your Constitution is tender—Your Business encreases—& my Experience can draw the Conclusion—

Whenever You find Yourself likely to suffer, let Me have the Pleasure of seeing You— I really believe an annual Trip to the Northward will secure & confirm your Health— It will greatly add to my Happiness—

I shall be oblig'd to You for informing Me, when You write again, how your Brother & the rest of your Friends are— I have, if You remember, a little Acquaintance {with him—}— Pray, present my Compliments to him—& also to M^r. Caryll² your Neighbour, on his late happy Occasion—

We are engag'd again in an Indian War—³ It has for the Time prov'd uncommonly severe & bloody— Great Numbers of our Frontier Inhabitants have felt the most dreadful Distresses— We have

August 1763

Intelligence that Col[one]l Bouquet has reachd Pittsburgh in a shattered Condition, after sustaining several furious Attacks—⁴

The Savages never molested him till he reachd Bushyrun,⁵ about 25 Miles on this Side Pittsburgh— This Run is the first Water that communicates with the Ohio—& for this Reason, the Enemy chose this Spot for Action, that their wounded Men might be conveyd home down the Stream with the greatest [*illegible*]{E}ase & Expedition— The Col[one]l after his Arrival instantly dischargd 300 useless Mouths, & sent them to Ligonier,⁶ under a strong Convoy— They did not meet with an Indian on the Road—So soon had these Wretches returnd to their own Country—As is their constant Custom after Battle— We expect them on our Frontiers again in the Fall—

I am, my Dear Sir, with the warmest Wishes for your Happiness, your very affectionate Friend & h[um]ble Serv[an]t

John Dickinson

Philadelphia August 24th—

ALS (Phi-Dreer)

¹ Possibly John Hall (see doc. 2:42, and n. 1, above), or his brother Henry Hall (1727–1770). Henry Hall represented Anne Arundel Co. in the Maryland Assembly, 1762–63 and 1765–66.

² JD may be referring to Charles Carroll (the Barrister; 1723–1783), who married Margaret Tilghman (1742–1817) on June 23, 1763.

³ Pontiac's War was named for the leader of the Ottawa tribe, who was also known as Obwandiyag (c. 1720–1769). The war, which began in May 1763 and lasted until 1766, was undertaken by a confederation of Indian tribes in the regions of the Great Lakes, Illinois, and Ohio Countries to drive out British soldiers and settlers. They attacked Pennsylvanians on the frontier, which led to the Paxton Boys slaughtering peaceful Indians. See also doc. 2:86, below.

⁴ Col. Henry Bouquet (1719–1765) was a Swiss-born British army officer and military writer. He was leading an expedition that left Carlisle, Pa., in July to relieve Fort Pitt. The *PG*, Aug. 25, 1763, printed an extract of a letter from Lancaster, dated Aug. 23, reporting, "That on the 5th and 6th Colonel Bouquet was attacked by the Indians, and lost and had wounded 110 men: On the 8th he arrived at Pittsburgh."

⁵ In the Battle of Bushy Run, Aug. 5–6, 1763, Bouquet prevailed over the Lenape, Mingo, Shawnee, and Wyandot tribes and relieved Fort Pitt.

⁶ Fort Ligonier, Westmoreland Co., Pa.

76

To Mary Cadwalader Dickinson, August 26, 1763

Honour'd Mother,

I got to Town last Friday Evening, very hearty, & have not had the least Symptom of the Fever & Ague since— Uncle Cadwalader's & Uncle Morris's Families are very well—

Capt[ain] Bassett¹ the second in Command in the late Expedition is arrivd here— Bouquet had 350 Men, the Indians, as Bassett thinks, about the same Number—

Our People were not attackd till they came near Bushy Run, about 25 Miles on this Side Pittsburgh—

Bouquet then formd his Men into a Circle— The Enemy surrounded him with a larger Circle, & thus kept him hemd in for 24 Hours— We had a Breastwork² composd of Bags of Flower & Grain—Our Horses Oxen & Sheep in the Center— Our Soldiers thus besiegd, began to feel a fiercer Enemy— Thirst— They had not tasted a Drop of Water since they were inclosd—& the Indians every now & then killd some of them— Their Danger was great— At Length an Expedient was thought of, that answerd all our Wishes— The Enemy according to their Custom, were securd by Trees—so that We could only engage them in a Number of single Combats, as it were, in which Kind of Fighting they excelld Us— Bouquet orderd Bassett with two Companies to move out of the Circle on the Road leading back to Ligonier, as if he had no other Hopes than to force a Retreat— He gave Directions to these Companies on their being attackd by the Indians, to give a Fire, break, & fly to a certain Spot on the Side of the Main Body— His Orders were punctually obeyd— The Savages pursued our flying Men with great Eagerness, having thrown away their Musquetts, & trusting to their Tomhawks—sure of Victory, which they now thought their own— As they rushd on in Clusters, quite exposd, to the Spot intended—a large Body of our Men posted there on their Bellies, rose & pourd in a most deadly Fire upon the Villains— This excellent Discharge, with some following Strokes was decisive— The Rascals fled, leaving 20 dead—& amongst them many of their greatest Warriors—who are well known—

It is imagind from the Marks of Blood & other Circumstances, that We have killd about 60 of them— We have lost 50 Men, killd—& 60 wounded— Not an Indian is to be seen now on the Road from Pittsburgh— Bouquet carried up all his Supplies—

Give my Love to my dear Brother— He will learn the unhappy Fate of poor M^r. Anderson & M^r. Chapman from the Paper—³ I hope the Fellow is grown wise & generous by this Time— If he has a Mind to make You—Me—himself & another Person complet{e}ly happy, he knows the Way— If I am acquainted with my own Heart, it forms no

September 1763

Wish or Prayer with more Fervour, than for his Happiness— Far woud it be from Me to desire him to do any Thing, but what on the most mature Deliberation I think, & firmly believe will answer this great Purpose— There is that lucky Moment in most People's Lives, that opens Opportunities of F{R}eputation & Dignity— The Prospect neglected & closd, the fantastic Idler languishes in toilsome Obscurity, & venerates for the Remainder of his Days, the Advantages {when} possess by some wiser Rival, which he himself might have securd— I hope to hear of a Trip to the October Meeting—⁴

I am, Honourd Mother,
your most dutiful & most affectionate Son,
John Dickinson
Philadelphia
August 26th—1763

I have sent ten Dozen of Bottles for Currant & Cherry Wine— My Brother's Pumps— Please to have the Wine find⁵—carefully drawn, & the Corks well waxd—

ALS (PHI-MDL)

¹ Capt. Henry Bassett left Pittsburgh, Pa., on Aug. 13 with an express message to Maj. Gen. Jeffery Amherst, to whom he gave "the agreeable Accounts of Colonel Bouquets' having totally Routed the Body of Indians who had attacked his Little Army near *Bushy Run*." Newspaper reports of Bassett's information differ somewhat from JD's information here; see, for instance, *PG*, Sept. 1, 1763. See also *Historical Collections: Collections and Researches*, 40 vols. (Lansing: Robert Smith & Co., 1892), 19:228.

² Breastwork: "*Fortification*. A fieldwork (usually rough and temporary) thrown up a few feet in height for defence against an enemy; a parapet" (*OED*).

³ The *PJ*, Aug. 25, reported: "[I]n a Squall, one of Mr. Watson's Ferry Boats, overset, near Robin's Reef, about 3 Miles from Staten Island; she immediately sunk down," killing, among others, James Anderson, "a Scotch Gentleman," and Mr. Chapman, "a young Gentleman from Philadelphia, who but a few Months since inherited an Estate of £. 20,000." A similar account in the *PG*, Aug. 25, stated that Anderson, too, was from Philadelphia.

⁴ Possibly a reference to one of two Philadelphia Monthly Meetings of Women Friends. Because the September Monthly Meeting conflicted with the Yearly Meeting, it was postponed until Oct. 4. The October Monthly Meeting convened on Oct. 28. See PHC-Quaker Coll.

⁵ That is, to have the wine clarified.

77

From David Hall, with Invoice, September 6, 1763

John Dickison Esq^r:

John Dickinson Writings and Correspondence

1763.

Bought of D. Hall¹

Sep[ember] 6.	Ward's Oratory, 2 Vols ²	£ 1.2.6
	Blackstone's Law Tracts ³	1. .
	Art of Speaking ⁴	10.6
	Watt's Supplement ⁵	10.6
	A Ream Paper.....	18.
		<u>£4.1.6</u>
		2.5—
		£1-16-6

Sir,

I have sent the Law Tracts with the other Books, and will take my Chance of the Magna Charta you had of me, as you seem to like the small Copy best; and am,

Sir,

Your obliged humble Serv[an]t,
David Hall⁶

ALS (PHi-Logan)

¹ David Hall (1714–1772) was a bookseller and printer, partnered with Benjamin Franklin. Together, they published the *PG*. Of Hall, another printer noted: “Had he not been connected with Franklin, he might have been a formidable rival to him in the business of printing and bookselling.” For Hall’s articles of agreement with Franklin, see *PBF*, 3:263–67.

² John Ward, *A System of Oratory*, 2 vols. (London: J. Ward, 1759).

³ William Blackstone, *Law Tracts*, 2 vols. (Oxford: Clarendon Press, 1762).

⁴ James Burgh, *The Art of Speaking*, 2nd ed. (Dublin: S.W. and R. Bell, 1763).

⁵ Isaac Watts, *The Improvement of the Mind: or, a Supplement to the Art of Logick* (London: J. Brackstone, 1741).

⁶ JD added notations to this document: “Mears / v / Smith / } / £12"16"6 Debt / £2"4"10 my / Fees & the P[lainti]ffs / wh[ic]h is — 8/3.” He also added: “£12"16"6 / 2"4"10 / £15"1"4.”

78

To Mary Cadwalader Dickinson, September 14, 1763

Honour'd Mother,

In Answer to what You mention concerning the Disposal of our Family,¹ I can only say, that whatever is agreeable to You, will be perfectly so to Me— I believe our Sentiments with Respect to selling, are the same— I would by no Means approve of it, unless the People desire it— In such Case, I would sell, taking Care to get them good Masters—

September 1763

If We sell, I think it would be proper to advertise, as prodigious Prices are given in New Castle County & in this Province—

I should expect seventy or eighty Pounds at least for Women & Children on an Average—

I shall be quite happy when You are disencumberd from the Fatigues of such a Family, & settled in Peace & Ease among your Friends here— I think You will be much pleasd with the Situation and Conveniences of this House— There is a fine open Passage for the Air backwards; a large pleasant Garden—& the Rooms very good[.] I am charmd with the Place—so is Aunt Cadwalader²—& She says You will be so Money flows in— And my Vanity has been very agreeably flatterd of late— I have not been so hearty these many Years, as I have been this Summer—quite free from the Complaint in my Breast & the Headach

But for three or four Days past, I have been troubled with a Pain in my Jaw— The Pain is now past, but has left a Sorꝛ{e}ness—which I hope to get rid of in a little Time—

Old M^r. Morris³ is in a very low State— It is thought he can hardly recover—Israel Pemberton's Wife⁴ is also in a bad State of Health—

All the rest of our Friends are very well— Please to give my Love to my Dear Brother, & tell him, he may take my bay Horse at the Price he offerd— I wish he would speak to M^{rs} Wilson about advertising for a Vendue⁵ of M^r. Wilson's Estate⁶—& desire Eben & Caleb to speak to her on the same Subject, as they promisd Me to do— I tremble at her keeping the Stock this Winter— Do let them press the Matter— I am only anxious for her Interest, & my Friend's Children— I have no Interest at Stake, for I am determind never to take one Farthing's Commission on the Estate—

I have sent a Pound of fine powderd Bark— Pray take Care of your Health— Do not fatigue yourself in {by} all kind of Business, nor expose Yourself in all kind of Weather— Prefer Ease to every Thing— Your Age and Tenderness require it—demand it— You say, and I sincerely believe it, that your most anxious Wish & Prayer is for my Brother's Happiness & mine— Be assured, most Honourd Mother, that the Preservation of your own Health, will be the most effectual Means to promote the Happiness of

your most dutiful &
most affectionate Son
John Dickinson
Philadelphia
Sept[embe]r 14th—1763

{I have sent 2 Bottles of Capers & 2 of Olives—the finest I ever tasted—}

Daniel⁷ behaves extremely well—

ALS (PHI-MDL)

¹ That is, the Dickinsons' slaves. In 1763 the Dickinsons owned at least eighty slaves, many of whom are named under the Aug. 22, 1763, entry "Shirts and Shifts Given our People"; see Mary Cadwalader Dickinson Ledger, PPL.

² Hannah Lambert Cadwalader, Dr. Thomas Cadwalader's wife.

³ Anthony Morris (1682–1763), a brewer and father of JD's uncle, Samuel Morris, died on Sept. 23. See *The Ancestry of Rosalie Morris Johnson*, comp. R. Winder Johnson (Philadelphia: Ferris & Leach, 1905), 152–57.

⁴ For Mary Stanbury Hill Jordan Pemberton, Israel Pemberton's second wife, see doc. 2:36, n. 11, above.

⁵ Vendue: "A public sale; an auction" (*OED*).

⁶ Thomas Willson died in April or early May. His will, dated April 4, designated JD as executor and his wife Elizabeth Willson as executrix. Willson bequeathed to his son, John Willson, £300 to be conveyed to JD, who was to "Take into his immediate care and keeping my said Son ... and him my said Son Diet, Cloath, Educate and bring up to the Study of the Law." Willson further directed his executors to sell a plantation, the money to be applied by JD "as an Additional Sum for the bringing up Educating &c. of my Son John" or to be paid by JD to John on his twenty-first birthday. In addition, Willson asked that his daughter, Sarah Willson, "be kept one whole year in the City of Philadelphia under the inspection and Direction of" JD, the expenses to come out of her inheritance. JD's brother Philemon Dickinson was one of the witnesses to the will. Kent Co., Del., Register of Wills, De-Ar. See also JD's Guardian Accounts, Nov. 13, 1773, May 16, 1776, Orphan's Court Records, Kent Co., Del., De-Ar; "John Dickinson's Management of the Thomas Wilson Estate," PPL-JDFP.

⁷ Here, JD is possibly referring to Daniel Dickinson, a slave.

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**JD et al., "An Act to Continue an Act, Intituled, 'An Act for
Regulating and Continuing the Nightly Watch, and Enlightening the
Streets, Lanes and Alleys of the City of Philadelphia,'"
September 30, 1763**

On January 19, 1763, the committee appointed to examine the laws of the province reported that the act for regulating the nightly watch was set to expire on September 15.¹ That 1756 act sought to ensure the "preservation of the persons and properties of the inhabitants" and was deemed "very necessary to prevent fires, murders, burglaries, robberies and other outrages and disorders."² Occupied by other matters, the Assembly did not appoint a committee until September 22, naming JD, Joseph Fox, and John Hughes to prepare a bill to continue the act.³

The committee presented a draft the next day, which the Assembly debated on the 24th and passed on the 27th.⁴ The bill was delivered to the governor, who reported on September 29 that he would approve the bill when it was formally presented. After the Assembly had the bill engrossed, they met with the governor on September 30, and he enacted it into law.⁵

An ACT to continue An Act, intituled, “An Act for regulating and continuing the Nightly Watch, and enlightening the Streets, Lanes and Alleys of the City of Philadelphia, and for raising Money on the Inhabitants and Estates of the said City for defraying the necessary Expence thereof.”

WHEREAS the Act of Assembly of this Province, passed in the Twenty-ninth Year of His late Majesty’s Reign, intituled, “*An Act for regulating, and continuing the nightly Watch, and enlightening the Streets, Lanes and Alleys of the City of Philadelphia, and for raising Money on the Inhabitants and Estates of the said City, for defraying the necessary Expence thereof,*” hath, upon Experience, proved greatly conducive to the Ease and Security of the Persons and Estates of the Inhabitants of the said City, and is now near expiring, by the Term of its own Limitation; THEREFORE BE IT ENACTED by the Honourable JAMES HAMILTON, Esq; Lieutenant-Governor, under the Honourable THOMAS PENN, and RICHARD PENN, Esquires, true and absolute Proprietaries of the Province of Pennsylvania, and Counties of New-Castle, Kent and Sussex, upon Delaware, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That the said Act, and every Article, Clause, and Thing therein contained, shall be, and is hereby declared to be and continue in full Force and Virtue, for and during the Term of Six Years, from the Publication hereof, and from thence to the End of the next Session of Assembly, and no longer.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the Act intituled, “*A Supplement to the Act intituled, An Act for regulating and continuing the Nightly Watch, and enlightening the Streets, Lanes and Alleys of the City of Philadelphia, and for raising Money on the Inhabitants and Estates of the said City, for defraying the necessary Expence thereof,*” passed in the Thirtieth Year of the late Reign,⁶ shall be, and is hereby declared to be repealed, and made null and void.⁷

ARGIII (1763), 295–96

¹ *Votes* (1763), 13.

² Act of Sept. 15, 1756: 5 *SALP* 224–43.

³ *Votes* (1763), 54.

⁴ *Ibid.*, 55, 57.

⁵ *Ibid.*, 57, 60–61, 64.

⁶ Act of Jan. 18, 1757: 5 *SALP* 284–87.

⁷ This act was referred to the King-in-Council on Feb. 10, 1766, becoming a law by lapse of time (6 *SALP* 309–10).

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**JD et al., “An Act to Enable the Commissioners for Paving the Streets of the City of Philadelphia to Settle the Accounts of the Managers,”
September 30, 1763**

Lotteries were a common way to raise funds for large public and private projects. From January to September 1763, the *Pennsylvania Gazette* advertised lotteries for Schippach Bridge, Chester Church, Burlington Church, Conestogoe Bridge, St. John Church, and a lighthouse on Cape Henlopen on Delaware Bay.¹ The issue at hand in February 1763 was that some of the managers of the lottery established to pave the streets of Philadelphia had not yet transferred the funds raised to the paving commissioners. When investigated by the Assembly, they promised to do so “as soon as conveniently may be.”² The money still had not come by September 23, when the commissioners brought their accounts before the Assembly to show that “considerable Ballances remain[ed].”³ Accordingly the Assembly appointed JD, Joseph Fox, Joseph Galloway, and Samuel Rhoads to a committee to draft a bill to remedy the situation. The committee presented a draft on September 28, which the Assembly debated that evening and passed the next day.⁴

An ACT to enable the Commissioners for paving the Streets of the City of Philadelphia to settle the Accounts of the Managers, and to sue for and recover, from several Persons, such Sums of Money as are now due, and unpaid, on Account of the several Lotteries set up and drawn for paving the Streets of the said City.

WHEREAS the Commissioners nominated and appointed in and by an Act of General Assembly, intituled, “*An Act for regulating, pitching, paving and cleansing the Highways, Streets, Lanes and Alleys, and for regulating, making and amending the Water Courses and Common Sewers within the inhabited and settled Parts of the City of Philadelphia,*”⁵

&c. or a Majority of them, were, at the Request of the Managers of the Lottery for paving the Streets of the said City,⁶ authorised and empowered to take and receive, of and from the Managers of any Lottery or Device whatsoever theretofore instituted to raise Money for paving the Streets of the said City, or any of them, and of and from all and every other Person and Persons, Bodies Politic or Corporate, all Sums of Money which should be offered or tendered to them, and to give Receipts and Discharges for the same, which were thereby declared fully and sufficiently to exonerate and discharge such Person or Persons, Bodies Politic or Corporate, who should pay such Monies to the said Commissioners, of and from the Appropriation and Disposition thereof, and of and from all Manner of Trust or Duty arising from, or respecting such Money, to all Intents and Purposes whatsoever.

AND WHEREAS most of the Managers of the Lottery for paving the Streets of the said City have, in Pursuance of the Act aforesaid, accounted with, and paid into the Hands of the said Commissioners for paving the Streets aforesaid, all the Monies by them received on Account of the said Lottery; but some others, Managers of the said Lottery, have hitherto neglected and refused to pay into the Hands of the said Commissioners for paving the Streets aforesaid, the several Sums by them received for and on Account of the said Lottery: AND WHEREAS also one other Lottery was heretofore set up and drawn for raising a Sum of Money for the Paving the North End of the *Second-street* of the said City, in Pursuance whereof great Sums of Money have been expended and laid out, by the Managers of the said Lottery,⁷ in paving the said North End of the *Second-street*; but no Account hath hitherto been rendered, nor any Person or Persons duly authorised to demand and require such Account of the said Managers, or to receive any Ballance that may yet remain in their or any of their Hands on Account of the said Lottery: AND WHEREAS several Debts are still due to the Managers of the said Lotteries for Tickets sold by them, THEREFORE BE IT ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor, under the Honourable *THOMAS PENN*, and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That all and every the Manager and Managers aforesaid, concerned in either of the Lotteries aforesaid, who have not already accounted with, and paid into the Hands of the said Commissioners the Sums from them respectively

due, shall, and they are hereby enjoined and required, upon Request for that Purpose to them, or any or either of them, made by the said Commissioners, to render fair and just Accounts of the Monies by them, or any of them, received, with the Debts to them, or any of them, due and owing for, or on Account of, Tickets sold, and the Names of the Person or Persons who stand indebted to the said Managers, or any of them, for Tickets sold as aforesaid; and upon Settlement of such Account with the said Commissioners, or their Successors, Commissioners for the Time being, the said Managers, and every of them, in either of the Lotteries aforesaid, upon any Sum of Money being found in their Hands, or from them, or either of them, due, or from any other Person or Persons to them, or either of them, indebted for Tickets purchased as aforesaid, shall, and they are hereby enjoined and required, forthwith to pay to the said Commissioners for the Time being, the Sums from them respectively due; and in Default of Payment, it shall and may be lawful to and for the said Commissioners, or a Majority of them, for the Time being, and they are hereby enjoined and required, in their own Names, to sue for and recover all such Sums of Money, by Action of Debt, Action on the Case, or otherwise, as may be proper; if above *Five Pounds*, in any County Court of Common Pleas within this Province; if *Five Pounds*, or under, before any Justice of the Peace, and upon Trial to give this Act, and the Books of the said Managers, or other legal Proof, in Evidence: And if it shall appear to the Court and Jury, or to the Justice of the Peace aforesaid, on any Trial by Virtue of this Act before them respectively had, that the Sum demanded, or any Part thereof, is justly due, then the said Court, or Justice respectively, shall give Judgment against the Defendant for so much as shall appear to be due, with Costs of Suit, and shall award Execution for the same, as is usually done in such like Actions before them respectively triable and determinable by the Laws of this Province; but if no Part of the Sum demanded shall appear to be due as aforesaid, then the said Court, or Justice respectively, shall give Judgment for the Costs against the Plaintiffs, which Costs shall be paid out of the Monies recovered or collected by Virtue of this Act.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the said Commissioners for the Time being, or a Majority of them, may, and they are hereby authorised and empowered, if there shall be any Danger of losing any Part of the Money hereby directed to be recovered, by the Insolvency of the Debtors, or any of them, to compound with any Person for the said Debts, and to receive a smaller Sum or Sums in Satisfaction of the whole, and to give Discharges or

Releases for the same, in such Manner as to them shall seem most proper for securing the Payment of the said Debts, or any Part thereof.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the said Commissioners for the Time being, or a Majority of them, shall account in the same Manner for any Sums of Money received or collected by Virtue of this Act, as they are directed to account by the Act herein before recited for Monies received or collected by Virtue thereof.⁸

ARGIII (1763), 292–95

¹ See *PG*, Jan. 6, 13, Feb. 17, March 17, April 21, June 16, 23, 1763. See also doc. 2:81, below.

² *Votes* (1763), 23–24.

³ *Ibid.*, 54.

⁴ *Ibid.*, 59–61.

⁵ See Act of March 26, 1762: 6 *SALP* 196–214. The Assembly also passed a supplement to the 1762 act in 1763. See doc. 2:67, above.

⁶ When this lottery was announced in 1761, the managers were merchants William Vanderspeigle (d. 1768), Thomas Yorke, James Child, Daniel Rundle (c. 1725–1795), John Relfe, Joseph Wood, Enoch Story, Thomas Ritchie, William Moore, and James Benezet. See *PG*, April 30, 1761.

⁷ The managers of this lottery were Henry Woodrow (died c. 1778), John William Hoffman (died c. 1775), William Clampffer (died c. 1767), Benjamin Davis, and Alexander Allaire (died c. 1797). See *PG*, May 21, 1761.

⁸ This act was referred to the King-in-Council on Feb. 10, 1766, and allowed to become a law by lapse of time. See 6 *SALP* 305–08.

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JD et al., “An Act for the Erecting a Light-House at the Mouth of the Bay of Delaware, At or Near Cape-Henlopen,” September 30, 1763

On April 21, 1763, managers of the lottery Thomas Willing and George Bryan advertised in the *Pennsylvania Gazette* for advice and estimates for the construction of a lighthouse and other improvements for the navigation of the Delaware Bay.¹ On September 16, a petition presented to the Assembly from the managers of the lighthouse lottery conveyed that the lottery had generated sufficient funds, and they expressed desire for legislation that would appoint persons to collect the funds and dispose of them in a “Manner as shall be most beneficial to the Public.”² JD was appointed to a committee with Joseph Fox, John Hughes, Joseph Galloway, and John Ross to prepare the bill, which was read the first time on September 23. It was read again and passed on September 29. The tower, completed in 1767, was at least twenty-six feet in diameter and the base was at least six-feet thick, three inches tall, and nearly eighteen feet in diameter. In 1789 the US government

assumed control of the lighthouse.³ The Henlopen lighthouse, the first in Delaware, remained in operation until 1924. It collapsed in 1926.

An ACT for the erecting a LIGHT-HOUSE at the Mouth of the Bay of Delaware, at or near Cape-Henlopen; for placing and fixing BUOYS in the said Bay, and River Delaware; and for appointing Commissioners to receive, collect and recover, certain Sums of Money heretofore raised by Way of Lottery, and to appropriate the same to the Purposes aforesaid.

WHEREAS a considerable Sum of Money has been heretofore raised on the Inhabitants of this Province and others, by a Lottery, to defray the Expence of building a Light-House on or near *Cape-Henlopen*, at the Mouth of the Bay of *Delaware*;⁴ and of placing Buoys in the said Bay, and River *Delaware*, in such Places as shall be thought convenient and necessary to assist and make easy the Navigation of the said River and Bay: AND WHEREAS the Managers of the said Lottery have represented to the Assembly of this Province, that the said Sum of Money remains in their Hands not yet laid out or disposed of; and that other Sums are yet outstanding, and remain due to them, for Tickets sold, and not paid for; and have signified their Desire, that the said Sums of Money should be appropriated and disposed of, by such Commissioners as should be appointed by Act of General Assembly, for and towards the Purposes aforesaid, in Pursuance of the original Scheme and Design of the said Lottery: Now to the End and Intent, that the said Sums of Money so outstanding may be recovered and collected, and the same, together with the Sums of Money now remaining in the Hands of the Managers of the said Lottery, may be duly applied to the original Design of the Adventures in the said Lottery, so beneficial to the Trade of this Province, BE IT ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor, under the Honourable *THOMAS PENN*, and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania* and Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That *Peter Reeve*, *William Richards*, *Luke Morris*, *William Morrell*, *John Kidd*, *Joseph Stamper*, and *John Gibson*,⁵ shall be, and they are hereby nominated and appointed Commissioners for building and erecting a Light-House at the Mouth of the Bay of *Delaware*, at or near *Cape-Henlopen*, in the County of *Sussex*, on *Delaware*; and for

placing and fixing Buoys in the River, and Bay of *Delaware*: And the said Commissioners, or a Majority of them, by and with the Approbation of the Governor, or Commander in Chief of this Province for the Time being, are hereby authorised, enjoined and required, with all convenient Speed, to purchase so much Land as they shall think necessary for the building and erecting a Light-House, and for the convenient Accommodation of the same, at the Mouth of the Bay aforesaid, at or near *Cape-Henlopen*, and on the same Land to build and erect a convenient Light-House, and to place and fix such and so many Buoys, in such Parts and Places of the said River and Bay, as they shall think necessary for the pointing out and discovering the Channel thereof; and to agree on, do, execute and perform, all and every other Act, Matter and Thing, relative to the Premises, which to them shall appear necessary for the making safe, and assisting the Navigation of the said River and Bay.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the said Commissioners, or a Majority of them, shall, and they are hereby authorised, enjoined and required, to ask for, demand, receive and collect, all and every Sum and Sums of Money, which are or ought to be in the Hands of the Managers of the said Light-House Lottery, from the said Managers; and also to ask for, demand and receive, all and every such other Sums of Money, which now are due and payable to the said Managers by any Person or Persons, Bodies Politic or Corporate whatsoever, for Tickets sold and unpaid for, in as full and ample a Manner, as if the said Sums of Money had become due to them in their own Right, and for the said Monies, when so received, to give one or more sufficient Receipts or Discharges, which Receipts or Discharges shall be, and are hereby declared fully and sufficiently to exonerate, acquit and discharge every such Person and Persons, Bodies Politic and Corporate, who shall pay any such Monies to the said Commissioners, of and from the Appropriation and Disposition thereof, and of and from all Manner of Trust and Duty arising from, or respecting such Money, to all Intents and Purposes whatsoever; and that the said Sums of Money, so received by the said Commissioners, shall, with all convenient Speed, be applied, appropriated and disposed of, for and towards the purchasing the said Land, building and erecting the said Light-House, and placing and fixing the Buoys aforesaid in the said River and Bay.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That if, after Demand made as aforesaid, any Person or Persons, Bodies Politic or Corporate whatsoever, in whose Hands such Monies shall

be, shall neglect or refuse to pay the same to the said Commissioners, that then it shall and may be lawful to and for them the said Commissioners, or a Majority of them, and they are hereby enjoined and required, in their own Names, to sue for and recover the said Monies by Action on the Case, or Action of Debt, as the Case may require, to be brought for the same; if above *Five Pounds*, in any County Court of Common Pleas within this Province; if *Five Pounds*, or under, before any Justice of the Peace, and upon Trial, to give this Act, and the Books of the said Managers, or any other legal Proof, in Evidence, in Support or such Action; and if it shall appear to the Court and Jury, or to the Justice of the Peace aforesaid, that the Sum demanded, or any Part thereof, is justly due, then the said Court or Justice respectively shall give Judgment against the Defendant for so much as shall appear to be due, with Costs of Suit, and shall award Execution for the same, as is usually done in such like Action, before them respectively triable by the Laws of this Province; and if no Part thereof shall appear to be due as aforesaid, that then the said Court of Justice respectively shall give Judgment for the Costs against the Plaintiff, which Costs shall be paid out of the Monies recovered or collected by Virtue of this Act.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the said Commissioners, or a major Part of them, or of the Survivors or Survivor of them, shall, from time to time, make Report of their Proceedings in the Premises to the Assembly of this Province, and shall also account with the Committees of Assembly annually appointed to settle the public Accounts, to be by the said Committees laid before the Assembly for their Approbation.

AND BE IT FURTHER ENACTED by the authority aforesaid, That if any Person or Persons whatsoever shall designedly take up, remove or destroy any such Buoy or Buoys so placed by the said Commissioners in the Bay or River *Delaware*, from the Place or Places where the same shall be placed and fixed as aforesaid, without the Consent, Order and Direction of the Governor or Commander in Chief of this Province for the Time being, every such Person, being thereof legally convicted in any County Court of Quarter Sessions in this Province, shall forfeit and pay the Sum of *Five Hundred Pounds*, one Half thereof to him or them that will sue and prosecute for the same, and the other Half to the Governor of this Province for the Support of Government, and moreover be committed to the common Goal of such County, there to remain during the Space of Twelve Months, without Bail or Mainprize.⁶

¹ *PG*, April 21, 1763.

² *Votes* (1763), 51.

³ See the Aug. 8, 1789, “Act for the Establishment and Support of Lighthouses, Beacons, Buoys, and Public Piers,” *SALUS*, 1:53–54. See also *PGW*, 4:520–26; 5:421–22, 533.

⁴ Cape Henlopen is near Lewes, Sussex Co., Del.

⁵ Peter Reeve (Reeves; fl. 1753–1780) was a ship captain and merchant. William Richards (b. 1738) was a founder. Luke Morris (1707–1793) was a Philadelphia businessman, and Capt. William Morrell (1719–1785), John Kidd (c. 1721–1791), and Joseph Stamper (d. 1785) were Philadelphia merchants. John Gibson (1729–1782), of Virginia, later became mayor of Philadelphia and auditor general of the Continental Congress.

⁶ Mainprize: “The action of procuring the release of a prisoner on someone’s undertaking to stand surety (‘mainpernor’) for his or her appearance in court at a specified time” (*OED*).

82

Election Announcement: Representative from Philadelphia County to the Pennsylvania Assembly, *The Pennsylvania Gazette*, October 6, 1763

This announcement lists the names of officials chosen in the various counties at the election that took place on the previous Saturday, October 1. JD is one of eight representatives from Philadelphia County. See the Appendix for his activities during this term.

83

JD et al., “An Act for Granting to His Majesty the Sum of Twenty-Four Thousand Pounds, for the Defence and Protection of This Province, and for Other Purposes Therein Mentioned,” October 22, 1763

The process of passing defense bills was fraught with problems throughout the French and Indian War: the Assembly rejected anything that infringed on liberty of conscience, and the governor rejected anything that infringed on the proprietors’ authority or estate. This dynamic had not changed by 1763 and was exacerbated by the beginning of Pontiac’s War in May. On September 21, JD and seven other assemblymen formed a committee to prepare a bill for “granting to His Majesty the Sum of *Twenty-five Thousand Pounds*.”¹ The Assembly passed the bill on the 27th, but Lieutenant Governor James Hamilton sent it back two days later because it relied on paper bills of credit

to raise funds.² The proprietors had rejected earlier attempts to make paper bills of credit, whose value fluctuated, legal tender, to ensure that the rent owed them would always be paid in pounds sterling.³ The Assembly unanimously resolved to keep the bill as originally drafted and appointed JD and John Ross to wait on the governor and convince him to pass the legislation. Hamilton again rejected the bill and warned the Assembly of the “great Mischiefs which may ensue to the Province” because of its stubbornness.⁴ On September 30, the Assembly again refused to acquiesce and again sent JD and Ross to convince the governor to change his mind. He did not, and so the issue of raising money fell to the new Assembly that convened on October 14.⁵ In the two weeks between the adjournment of the 1762–63 Assembly and the governor’s message to the new Assembly on October 15, word reached Philadelphia of “many barbarous and shocking Murders, and other Depredations, having been committed by *Indians* on the Inhabitants of *Northampton County*.”⁶ When the governor asked that they put their differences aside and work together to protect the people of the province, the Assembly resolved on October 18 to raise £24,000 without relying on paper money. A new committee of JD and six others drafted the bill, which the Assembly passed on October 21 and to which the governor assented the next day.⁷

An ACT for granting to His Majesty the Sum of Twenty-four Thousand Pounds, for the Defence and Protection of this Province, and for other Purposes therein mentioned.

WHEREAS many barbarous Invasions have been made upon several of His Majesty’s Colonies in *America*, and on the Frontiers of this Province in particular, by divers Parties of the Northern and Western *Indians*, whereby a great Number of the Inhabitants have been driven from their Habitations, many perfidiously murdered, and the most cruel Devastations committed, in manifest Violation of the most solemn Treaties of Peace lately concluded on between our most gracious Sovereign and the said *Indians*:⁸ AND WHEREAS Circumstances so affecting and distressing to the said Frontier Inhabitants demand immediate Aid and Protection, therefore we the Representatives of the Freemen of the Province of *Pennsylvania*, desirous of demonstrating our Duty to our most gracious Sovereign, and to afford all the Assistance and effectual Protection in our Power to the distressed Frontier Inhabitants, do pray that it may be enacted, AND BE IT ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-Governor

under the Honourable *THOMAS PENN* and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That the Sum of *Twenty-four Thousand Pounds*, lawful Money of this Province, is, and is hereby declared to be given and granted to His Majesty, to and for the particular Purposes herein after mentioned and appointed.

AND WHEREAS in and by an Act of General Assembly of this Province, passed in the First Year of His present Majesty's Reign, intituled, "*An Act for appointing certain Persons, herein after named, to apply for and receive the distributive Shares and Proportions which are or shall be allotted to this Province, out of the Sum or Sums of Money granted by Parliament to His Majesty's Colonies in America,*"⁹ the Trustees of the General Loan-Office did draw certain Bills of Exchange on the Agents appointed in and by the same Act to apply for and receive the distributive Shares and Proportions allotted to this Province, out of the Sums of Money granted by Parliament to His Majesty's Colonies in *America*, and the same Bills so drawn did sell and dispose of to such Persons as would purchase the same, for Bills of Credit of this Province: AND WHEREAS the said Trustees, by the said recited Act of Assembly, were authorised and enjoined to appropriate and apply Part of the Money that should arise from the Sale of the Bills of Exchange aforesaid to the particular Uses, Intents and Purposes therein mentioned and specified, and the remaining Part thereof to pay and deliver into the Hands of the Committees of Assembly, to be by them burnt, sunk and destroyed, in Abatement of the public Taxes, and towards sinking the Sums of Money theretofore granted to His Majesty's Use.

AND WHEREAS in and by Virtue of an Act of General Assembly, passed in the Second Year of His present Majesty's Reign, intituled, "*An Act for granting to His Majesty the Sum of Twenty-three Thousand Five Hundred Pounds, for the Purposes therein mentioned,*"¹⁰ the Sum of *Twenty-three Thousand Five Hundred Pounds* was given and granted to His Majesty's Use, and the said Trustees of the General Loan-Office were thereby enjoined and required, out of the Monies so ordered to be burnt, sunk and destroyed, in Abatement of the public Taxes, to retain in their Hands the said Sum of *Twenty-three Thousand Five Hundred Pounds*, subject nevertheless to the Draughts and Orders of the Commissioners nominated in the same recited Act

of Assembly, with the Assent of the Governor and Commander in Chief of this Province for the Time being: AND WHEREAS in and by a certain other Act of General Assembly, passed in the Third Year of His present Majesty's Reign, intituled, "*An Act for the Relief of Persons whose Apprentices or Servants have enlisted in the late King's, or His present Majesty's Service,*"¹¹ the Commissioners therein nominated and appointed were authorised and impowered to draw Orders on the said Trustees of the General Loan-Office for such Sum or Sums of Money, not exceeding the Sum of *Twenty Pounds*, for each Apprentice or Servant, as they should judge to be a reasonable Compensation for the Damage which the Master of such Apprentice had sustained by such Enlistment, which Orders so drawn the Trustees aforesaid were thereby directed to pay and discharge out of the Monies by them received, or to be received, on the Sale of the Bills of Exchange directed to be drawn as aforesaid.

AND WHEREAS in and by Virtue of one other Act of General Assembly of this Province, passed in the Second Year of His Majesty's Reign, intituled, "*An Act to enable the Trustees of the State-House to purchase certain Lots of Ground, the Remainder of the Square whereon the said House now stands,*"¹² the Trustees of the General Loan-Office aforesaid were ordered and directed, out of the Monies so received for the Sale of the said Bills of Exchange, and ordered to be burnt, sunk and destroyed, to retain in their Hands the further Sum of *Five Thousand Pounds*, subject nevertheless to the Draughts and Orders of the Trustees of the State-House for the Time being, for the Purposes in the same Act mentioned.

AND WHEREAS in and by Virtue of another certain Act of General Assembly, passed in the present Year of His Majesty's Reign, intituled, "*An Act for preventing Abuses in the Indian Trade, and for securing and strengthening the Peace and Friendship lately concluded with the Indians inhabiting the Northern and Western Frontiers of this Province,*"¹³ the said Trustees of the General Loan-Office were enjoined and required to pay into the Hands of the Commissioners for *Indian Affairs* the Sum of *Fourteen Thousand Pounds*, out of the Money arising by the Parliamentary Grants, being Part of the Money so ordered to be sunk, in Abatement of the public Taxes, for the Uses, Intents and Purposes, in the said Act specified: AND WHEREAS the said Trustees, in Pursuance of the Directions of the said several herein before recited Acts of Assembly, have applied and appropriated Part of the said Monies, so arising by the Sale of the said Bills of Exchange, to the Uses, Intents and Purposes, therein mentioned and appointed, and

there still remains in their Hands more than sufficient to answer the Purposes aforesaid, the Sum of *Twelve Thousand Pounds*, or thereabouts.

AND WHEREAS in and by Virtue of another Act of General Assembly of this Province, passed in the First Year of His said present Majesty's Reign, intituled, "*An Act for laying a Duty on Negroes and Mulattoe Slaves, imported into this Province*,"¹⁴ all the Duties arising by Virtue of the same Act are therein directed to be paid to the Uses and Purposes of an Act passed in the Twelfth Year of the Reign of King GEORGE the First, intituled, "*An Act for the better regulating of Negroes in this Province*,"¹⁵ so far as it relates to the Payment of the Owners of *Negroes* convicted of Capital Crimes, and executed in this Province; and the Overplus, if any, to be paid into the Hands of the Provincial Treasurer, to be applied towards sinking the Sums of Money before that Time granted to the King's Use: AND WHEREAS there now remains in the Hands of the Provincial Treasurer, over and above what has been paid to the Owners and Masters of *Negroes* convicted and executed as aforesaid, and what has been sunk by the Committees of Assembly, in Abatement of the Taxes aforesaid, the Sum of *One Thousand and Thirty-three Pounds, Six Shillings and Six-pence*.

AND WHEREAS it is convenient and necessary, that the said several Sums of Money, so as aforesaid remaining in the Hands of the Trustees of the General Loan-Office aforesaid, and Provincial Treasurer, should be applied, in this Time of Danger, for and towards the Protection and Defence of this Province, and not be burnt and sunk, in Abatement of the Sums of Money heretofore granted to the King's Use; Wherefore, BE IT ENACTED by the Authority aforesaid, That the said several Sums of Surplus Monies, so as aforesaid arising out of and from the Acts of General Assembly respectively herein before recited, and now remaining in the several and respective Hands of the Trustees of the General Loan-Office, and Provincial Treasurer of this Province, shall be, and are hereby declared to be given and granted to His Majesty, and subject and liable to the Draughts and Orders of the Commissioners herein after nominated and appointed, with the Assent and Approbation of the Governor, or Commander in Chief of this Province for the Time being, to dispose of the Monies hereby granted to His Majesty's Use, any Thing in the said herein before recited Acts of Assembly to the contrary thereof notwithstanding.

AND WHEREAS by Virtue of an Act of General Assembly of this Province, passed in the present Year of His Majesty's Reign, intit-

uled, “*An Act for preventing Abuses in the Indian Trade, and for securing and strengthening the Peace and Friendship lately concluded with the Indians inhabiting the Northern and Western Frontiers of this Province,*” the Commissioners therein nominated and appointed did borrow and receive, of and from the Trustees of the General Loan-Office, the Sum of *Fourteen Thousand Pounds*, for the carrying on and prosecuting a Trade with the said Northern and Western *Indians*: AND WHEREAS by the Hostilities and Depredations lately committed by the said *Indians*, on the Inhabitants of this Province, all further Trade and Commerce with them is rendered useless and impracticable, and the good Purposes of the said Act totally frustrated, BE IT THEREFORE ENACTED by the Authority aforesaid, That the Commissioners for *Indian Affairs*, nominated and appointed in and by Virtue of the said last recited Act, shall, and they are hereby enjoined and required, with all convenient Speed, and at farthest within the Space of Eighteen Months next after the Publication of this Act, to sell, dispose of, and convert into Money, all and every Part and Parcel of the Goods, Wares and Merchandize in their Hands, Custody or Power, by them purchased with the Monies so borrowed, or otherwise howsoever in their Possession as Commissioners for *Indian Affairs* aforesaid: And that the said Commissioners shall, with all convenient Speed, and at furthest within the Space of Eighteen Months from the Publication of this Act, pay into the Hands of the said Provincial Treasurer all such Monies as shall arise from the Sale of the said Goods, Wares and Merchandizes, together with all such other Monies as shall be in their Hands belonging to the said *Indian Trade*, by any Ways or Means whatsoever, upon a full and final Settlement of their Accounts; which they, the said Commissioners for *Indian Affairs*, are hereby required to render and settle with the Committee of Assembly annually appointed for the Adjustment of the public Accounts: And that so much of the same Money, so paid into the Hands of the Provincial Treasurer, as shall make up the several Sums of Surplus Money, and the said *Seven Thousand Pounds*, in the Whole, the Sum of *Twenty-four Thousand Pounds*, shall be, and is hereby declared to be given and granted to His Majesty, and shall be and remain in the Hands of the said Provincial Treasurer, subject to the Draughts and Orders of the Commissioners hereby nominated to dispose of the Money hereby granted to His Majesty’s Use, with the Approbation of the Governor, or Commander in Chief of this Province for the Time being, any Thing in the said last recited Act of Assembly to the contrary thereof notwithstanding: And

that the Residue thereof shall remain in the Hands of the said Treasurer, to be disposed of by Act of General Assembly.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That it shall and may be lawful to and for the Commissioners herein after nominated and appointed, with the Assent and Approbation of the Governor, or Commander in Chief of this Province for the Time being, to apply and appropriate a certain Sum of *Seven Thousand Pounds*, now remaining in the Hands of the said Trustees of the General Loan-Office, to and for the Uses, Intents and Purposes, herein after mentioned, the said *Seven Thousand Pounds* being Part of *Fifteen Thousand Pounds*, granted to His Majesty for the Protection and Defence of the City of *Philadelphia*, in and by the said recited Act of Assembly, intituled, "*An Act for granting to His Majesty the Sum of Twenty-three Thousand Five Hundred Pounds, for the Purposes therein mentioned,*" any Thing in the same recited Act to the contrary thereof notwithstanding.

AND in order to assure and secure to the Commissioners nominated in the said last recited Act, with the Assent of the Governor, or Commander in Chief of this Province for the Time being, the Disposition and Application of the like Sum of *Seven Thousand Pounds*, to and for the Protection and Defence of the said City of *Philadelphia* (to and for which Purpose the same by Law was given and granted to His Majesty) when it shall become expedient and necessary, BE IT ENACTED by the Authority aforesaid, That so much of the Act of General Assembly of this Province, passed in the Thirtieth Year of His late Majesty King GEORGE the Second, intituled, "*An Act for striking the Sum of Thirty Thousand Pounds in Bills of Credit, and giving the same to the King's Use, and for providing a Fund to sink the Bills so to be emitted, by laying an Excise upon Wine, Rum, Brandy, and other Spirits,*"¹⁶ as relates to the raising, levying, collecting and paying the Excise upon Wine, Rum, Brandy, and other Spirits, and all other the Duties, Fines and Penalties, Matters and Things, relative to the said Excise, directed and enjoined in and by Virtue of the said Act, be, and are hereby continued and extended, from the Time limited in and by the same Act, for and during the Term of Three Years, and from thence to the End of the next Session of Assembly, and no longer.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That the Sum of *Seven Thousand Pounds*, Part of the Monies which shall arise and be paid into the Hands of the Provincial Treasurer, in and by Virtue of the Continuance and Extension of the said last recited Act of Assembly, shall be, and is hereby declared to be subject

and liable to the Draughts and Orders of the same Persons, and shall be applied to and for building and erecting such Fortifications as may be necessary for the Protection and Defence of the said City of *Philadelphia*, as are mentioned and specified in the said recited Act for granting to His Majesty the Sum of *Twenty-three Thousand Five Hundred Pounds, &c.* as fully, to all Intents and Purposes, as if this Act, and every Article, Clause, and Thing therein contained, had never been enacted, or passed into a Law.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That *Lyn Ford Lardner, Thomas Cadwalader, Benjamin Franklin, Joseph Fox, John Hughes, Joseph Galloway, and John Baynton*, Esquires, or the major Part of them, or of the Survivors of them, with the Consent and Approbation of the Governor, or Commander in Chief of this Province for the Time being, and not otherwise, shall order, direct and appoint the Disposition of the Monies arising by Virtue of this Act, and given and granted to His Majesty, for and towards discharging the Arrears due for raising and victualing the Troops lately taken into the Service of this Province, and for and towards raising, paying and victualing Eight Hundred and Twenty-five Men, to be employed in the most effectual Manner for the Defence and Protection of this Province, till the First Day of *February* next, and for and towards paying and discharging all such Certificates as have been heretofore drawn, by Order of Assembly, for the incidental Charges of this Government, not heretofore provided for: And that the said *Lyn Ford Lardner, Thomas Cadwalader, Benjamin Franklin, Joseph Fox, John Hughes, Joseph Galloway, and John Baynton*, or a Majority of them, or of the Survivors of them, shall, and they are hereby impowered and required, as often as there shall be Occasion for Money for the Purposes aforesaid, to draw Orders on the said Trustees of the General Loan-Office, and Provincial Treasurer aforesaid, or either of them, for the Monies herein before made subject to their Orders or Draughts, which Orders or Draughts, so drawn and paid by the said Trustees, or Provincial Treasurer, shall be produced to the Committees of Assembly for the Time being, and by them allowed in Discharge of so much of the Money granted to His Majesty, by Virtue of this Act; and the said Orders, so as aforesaid paid, shall be sufficient to discharge the said Trustees and Provincial Treasurer, their Executors and Administrators respectively, of and from so much as shall be respectively paid by them, and specified in the said Orders: And the Commissioners last mentioned, for their Trouble in discharging the Duties required of them by

this Act, shall have and receive *One per Centum* on the whole Sum of the Orders by them drawn, and no more.

AND the said Trustees and Treasurer shall have and receive, for their Trouble respectively in performing the Duties enjoined and required of them by this Act, the Sum of *Ten Shillings* each, for every *Hundred Pounds*, and no more.¹⁷

ARGIII (1763), [299]–306

¹ *Votes* (1763), 54. The other members were Joseph Fox, John Hughes, Joseph Galloway, Plunkett Fleeson, Samuel Rhoads, John Morton, and John Ross.

² *Ibid.*, 57, 60–61.

³ Hamilton's message to the Assembly reminded the members that the proprietors objected to a 1759 bill because "the Bills of Credit to be thereby issued, were made legal Tender for the Discharge for all Debts and Contracts whatsoever, at the Rates at which they were emitted, by which they conceived themselves liable to great Injustice in the Payment of their Rents and Quitrents, and thereupon made Application to His Majesty in Council for Redress." See *Votes* (1763), 60.

⁴ *Votes* (1763), 61–62.

⁵ *Ibid.*, 63.

⁶ *Votes* (1764), 5.

⁷ *Ibid.*, 6–9. The other committee members were Joseph Fox, Joseph Galloway, Samuel Rhoads, John Morton, Samuel Foulke (1718–1797), a Quaker yeoman, surveyor, and Bucks Co. representative to the Assembly; and James Wright.

⁸ Col. John Bradstreet (1714–1774) met with the Ottawas, Chippewas, Hurons, Miamis, Potawatomis, and Mississaugas at Detroit in early September 1763 for a successful treaty conference. The treaty the chiefs signed contained an unprecedented article that declared them to be subjects of George III and their lands subject to his sovereign rule. Pontiac did not attend, but instead sent a wampum belt of peace, which Bradstreet promptly chopped into pieces with a hatchet. In doing so, "he chopped his own credibility to bits, restoring stature to an Indian leader whose own people had largely repudiated him." Maj. Gen. Thomas Gage (c. 1719–1787) subsequently ordered Bradstreet to abandon the treaty and continue the war until its main perpetrators were captured and executed. See Anderson, *Crucible*, 620–23.

⁹ Act of Sept. 26, 1761: 6 *SALP* 114–18.

¹⁰ Act of May 14, 1762: 6 *SALP* 226–29.

¹¹ Act of March 4, 1763: 6 *SALP* 250–52. See doc. 2:65, above.

¹² Act of May 14, 1762: 6 *SALP* 223–26.

¹³ Act of April 2, 1763: 6 *SALP* 283–93.

¹⁴ Act of March 14, 1761: 6 *SALP* 104–10.

¹⁵ Act of March 5, 1726: 4 *SALP* 59–64.

¹⁶ Act of Sept. 21, 1756: 5 *SALP* 243–62.

¹⁷ Passed on Oct. 22 and referred to the King-in-Council on Feb. 10, 1766, becoming a law by lapse of time (6 *SALP* 311–19).

JD et al., “An Act to Prohibit the Selling of Guns, Gunpowder, or Other Warlike Stores, to the Indians,” October 22, 1763

At around 3 P.M. on October 18, 1763, the same day JD was appointed to a six-man committee to draft a bill “for granting to His Majesty the Sum of *Twenty-four Thousand Pounds*,” the same group was also charged to “bring in a Bill for prohibiting the Sale of Gunpowder, and other Ammunition, to *Indians* within this Province.”¹ The legislation, it was noted, was designed to counter the “great Mischiefs” that had occurred from selling “Gunpowder and Lead to *Indians*, and other ill disposed Persons therein.”² Indeed, on October 16th, Major General Jeffery Amherst reported to Lieutenant Governor James Hamilton that “the Savages on the Frontiers of Pennsylvania” held “bad intentions” toward the colonists, adding that they had “butchered” Pennsylvanians.³ In his letter to Hamilton, Amherst enclosed a letter of October 6 from Sir William Johnson, first baronet, superintendent for Indian affairs, in which Johnson stated that “the Delawares” were armed with “the War Hatchet, Bow and Arrows” and planned to attack the English. Johnson’s concerns about the Delaware Indians were not new to Amherst. “The *Senecas & Delawares*,” wrote Johnson on September 30, “seem Closely connected together in Mischief.”⁴ JD and the committee thus returned a draft of the bill on October 19, and on October 20, Hamilton ordered the presentation of Amherst’s and Johnson’s letters for consideration. The next day, JD and the committee delivered a third draft of the bill. It passed, and Hamilton signed it on October 22, the same day he held a council meeting with John Curtis, Samuel Curtis, Jemmy Nappier, Robin Nanticokes, and Conoy Sam, representatives of the Native American residents of the town of Wighalousin (Wyalusing, Bradford County).⁵

An ACT to prohibit the Selling of Guns, Gunpowder, or other Warlike Stores, to the Indians.

WHEREAS several Tribes of *Indians*, for some Time past, have perfidiously made Incursions within the Frontiers of this Province, and have perpetrated many cruel and barbarous Murders on the Inhabitants thereof, and it must be, in the present Circumstances of Affairs, of dangerous Consequence to supply the said *Indians* with Guns, Gunpowder, or other Warlike Stores; For Prevention whereof, BE IT ENACTED by the Honourable *JAMES HAMILTON*, Esq; Lieutenant-

Governor under the Honourable *THOMAS PENN* and *RICHARD PENN*, Esquires, true and absolute Proprietaries of the Province of *Pennsylvania*, and Counties of *New-Castle*, *Kent* and *Sussex*, upon *Delaware*, by and with the Advice and Consent of the Representatives of the Freemen of the said Province, in General Assembly met, and by the Authority of the same, That from and after the Passing of this Act, if any Person or Persons whatsoever shall, directly or indirectly, give to, sell, barter or exchange, with any *Indian* or *Indians* whatsoever, any Guns, Gunpowder, Shot, Bullets, Lead, or other Warlike Stores, without Licence from the Commander in Chief of the King's Forces in those Parts, or from the Governor, or Commander in Chief of this Province for the Time being, first had and obtained, every such Person or Persons so offending, being thereof legally convicted in any County Court of Quarter Sessions within this Province, shall forfeit and pay the Sum of *Five Hundred Pounds*, one Moiety thereof to the Informer, and the other Moiety thereof to the Governor, or Commander in Chief of this Province for the Time being, and shall furthermore be whipt with Thirty-nine Lashes on his bare Back, well laid on, and be committed to the common Goal of the County, there to remain Twelve Months, without Bail or Mainprize.

AND BE IT FURTHER ENACTED by the Authority aforesaid, That this Act shall continue and be in Force for the Term of Twelve Months, and from thence to the End of the next Session of Assembly, and no longer.

ARGIII (1763), 306–07

¹ *Votes* (1764), 6.

² *Ibid.*

³ *Ibid.*, 7.

⁴ *PWJ*, 4:210, 211.

⁵ *Votes* (1764), 8–9; *CRP* 9:62, 63–64, 67–70.

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JD et al., “The Address of the Representatives of the Freemen of the said Province, in General Assembly Met,” December 24, 1763

In the fall of 1763, John Penn (1729–1795), William Penn's grandson, arrived in Philadelphia to serve as the province's governor. His father, Richard Penn, and his uncle, Thomas Penn, had inherited the proprietorship along with their two brothers upon their father's death in 1718. Thomas assumed the shares of his brothers John and Dennis (1706–1723) upon their deaths, giving him three-quarters control of

the proprietorship. John Penn immediately replaced James Hamilton, who had been working with the new Assembly since it convened on October 14. On October 22, the Assembly voted to adjourn until January 16, 1764, but Penn called it back into session on December 20 to share a letter from Major General Jeffery Amherst asking that Pennsylvania raise one thousand men to serve with the king's troops.¹ Assemblyman Samuel Foulke reported that "[t]he House went immediately into Consideration of s[ai]d requisition, which was deliberately debated, three Days Successively. The principal speakers for [th]e Measure were B. Franklin, John Hughs, Jos. Galloway, & J. Dickenson; the Chief of those against it were G. Ashbridge & W. Smith."² On December 22, JD and ten others were appointed to draft a response to Penn's and Amherst's demands, which they delivered on the 23rd.³ The message, which was approved on that date, was signed by the speaker and delivered to the governor the next day.⁴

To the Honourable *JOHN PENN*, Esq; Lieutenant-Governor, and
Commander in Chief of the Province of *Pennsylvania*, and Counties
of *New-Castle, Kent and Sussex*, upon *Delaware*,

The ADDRESS of the REPRESENTATIVES of the FREEMEN of the
said Province, in GENENRAL ASSEMBLY met.

May it please your HONOUR,

THE Representatives of the Freemen of the Province of Pennsylvania, in General Assembly met, with the most cordial Satisfaction, embrace this Opportunity to congratulate your Honour on your late safe Arrival among us, and Accession to this Government.

The Appointment of one of the Descendants of our first worthy Proprietary to preside over the Province, gives us high Pleasure, and, we doubt not, is very agreeable to the People we represent; as we are induced to hope for many Advantages from the Administration of one of the Proprietary Family, whose true Interest is certainly so intimately connected with that of the People, that neither can suffer an Injury, by any unfortunate Disunion, without affecting the other.

Permit us therefore to return your Honour our Thanks for the warm Professions you are pleased to make, of doing every Thing in your Power that may tend to the Advantage and Prosperity of the Province, and to cultivate and improve Harmony, and a good Understanding, with us, and all future Assemblies.— A Conduct so judicious and obliging, must certainly render your Government easy and agreeable to yourself, and happy

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to the People, as you may be assured nothing shall be wanting, on our Parts, to promote and preserve that Harmony which is so essentially necessary, at all Times, for the Ease of the several Branches of the Legislature, and the public Welfare.

Permit us also to request, you will be pleased to return the Honourable Proprietaries our hearty Acknowledgments, for the Assurances they give us of their paternal Regard and Affection for the good People of this Province, and their Inclination to promote our real Happiness.— Such a Disposition, we are persuaded, will secure to our Proprietaries the Esteem and Respect of the Inhabitants of the Province, and induce them, on all Occasions, to unite in promoting the Proprietary Interest, and the Happiness of their Families.

The good Opinion you are pleased to entertain of our Zeal for His Majesty's Service, and our Regard for the Safety of the Province, is very grateful to us.— The paternal Affection of the best of Sovereigns for His Subjects, however remote, and His constant Attention to the Preservation of their Rights and Liberties, justly demand the highest Degree of Loyalty and Affection to His Royal Person, and Zeal for His Service, that a grateful People can possibly demonstrate.— And the important Charge with which we are entrusted, and our inviolable Duty to the People we represent, we hope will insure to them our utmost Regard to their Protection and Safety.— Influenced by these Motives, we have resolved to comply fully with the General's Requisition recommended to us by your Honour, in granting to His Majesty a Thousand Men, exclusive of commissioned Officers, to be divided into two Corps, commanded by their proper Field Officers; and we shall immediately proceed to prepare a Bill for the raising of the Supplies necessary for the Cloathing and Paying the Troops, that the same may be presented to your Honour, for your Concurrence.

To this important Measure we have acceded with the utmost Cheerfulness, from a Conviction, that nothing less than a vigorous Exertion of the united Strength of the Colonies, in offensive Operations against the Enemy, and making them sensible of the Weight of our just Resentment, for their Perfidy in captivating and cruelly murdering our Inhabitants, as well as Traders, who were supplying them with the Necessaries of Life, at their own instance and Solicitation, can procure a Restitution of our Fellow Subjects, who have been perfidiously taken or detained since the late Peace, contrary to express Treaties;⁵ nor can any Thing less, in our Opinion, obtain a Redress for the Losses sustained by our Merchants and others, His Majesty's Subjects in this Province, and reduce the Enemy to accept of reasonable Terms of Accommodation: And at the same time

that we have resolved thus fully to comply with the General's Requisition, we make no Doubt the lower Counties, under your Honour's Government, will likewise cheerfully raise a proportionable Number of Men for the same important Service.

Signed by Order of the House,

ISAAC NORRIS, Speaker.

December 24, 1763.

Votes (1764), 16–17

¹ *Votes* (1764), 10–12.

² George Ashbridge (1704–1773) was Quaker farmer and shopkeeper from Chester Co., Pa. William Smith (c. 1698–1782) was a Quaker farmer from Bucks Co., Pa. See also “Fragments of a Journal Kept by Samuel Foulke, of Bucks County,” *PMHB* 5, no. 1 (1881): 65.

³ The other committee members were Joseph Galloway, Joseph Fox, John Hughes, Samuel Rhoads, William Rodman (Roadman; c. 1720–1794), a Quaker landowner from Bucks Co., John Morton, James Wright, John Blackburn (c. 1720–1767), a Quaker farmer serving York Co., Pa., David McConaughy, and John Ross.

⁴ *Votes* (1764), 15–18.

⁵ The Treaty of Paris, implemented on Feb. 10, 1763, ended the Seven Years' War, and ceded all of France's North American lands to Britain. Officials in the British Indian Department and the military, acting on information from British traders and officers in the Great Lakes region, believed Pontiac's War to be part of a French conspiracy to regain those lands.

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JD et al., “A Message to the Governor from the Assembly,” December 24, 1763

On December 14, 1763, a vigilante group of Scotch-Irish Presbyterians from Paxtang Township, Lancaster County, known as the Paxton Boys, attacked a peaceful tribe of Conestoga Indians on the Pennsylvania frontier, killing twenty, in retaliation for hostilities during the French and Indian War. The Paxton Boys alleged that the Conestoga Indians were colluding with other tribes in Ohio who were attacking Pennsylvania's western frontier, including the Lenape and Shawnee. On the evening of December 21, Governor John Penn shared with the Assembly the first news of the Paxton Massacre, stating, “a Number of People, well armed and mounted, went to the *Indian* town in *Conestogoe* Manor, and, without the least reason or provocation, in cool Blood, barbarously killed six of the Indians settled there.” Those who had escaped were now in the Lancaster workhouse and in need of

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food and clothing. They requested removal to Philadelphia or its vicinity. JD and the same ten members who prepared the response to Penn's request the day before to raise one thousand troops also prepared this message.¹ Before the Indians were removed from Lancaster, fifty to sixty Paxton Boys broke into the workhouse on December 27 and murdered fourteen of them.

A MESSAGE to the GOVERNOR from the ASSEMBLY.

May it please your HONOUR,

*WE have taken into our Consideration your Honour's Message of the Twenty-first Instant, and are extremely concerned to hear of the unprovoked Cruelties committed on the peaceable Indians, settled on Conestogoe Manor.*²

We thank the Governor for communicating this Intelligence, and the Indian Conferences, to us; and for the Measures he has taken to have the Perpetrators of this horrid Barbarity, and their Accomplices, apprehended and brought to Justice.

We will provide for the Expence of removing and maintaining such of those unhappy People as have escaped the Fury of the abovementioned lawless Party; and desire your Honour will be pleased to order them to be brought down to some Place of Safety, as soon as it can conveniently be done.

We shall also make Provision for the Support of the few friendly Indians at Wighalousin, on the Sasquehannah, who incline to come and live amongst us, whenever your Honour shall think proper to invite them into the interior Parts of the Province.

Signed by Order of the House,

December 24, 1763.

ISAAC NORRIS, Speaker.

Votes (1764), 17

¹ *Votes* (1764), 14–16.

² Now Conestoga, a small town in Lancaster Co., Pa., first surveyed in 1717, about 80 mi. west of Philadelphia.

Undated

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Commonplace Book III, [n.d.]

Filed within the leaves of this large, handsome volume is a receipt to JD from W. Wiltshire dated August 20, 1756, for carrying one “Chest” from “London.” This perhaps indicates that JD purchased the book while he was in London to study law. Indeed, many of the entries in this commonplace book seem as though they were selected by a young man pondering the world, demonstrating an impressive ecumenical literary range. The few hints about dates place it later, however. One entry was taken from Robert Dodsley’s collection of poems in 1758, when JD was 26. Notes on two unnumbered pages at the end of the volume were separated from the rest by perhaps 100 pages, and were almost certainly made after JD began practicing law in Philadelphia and may have been as late as 1773. Also, the final two entries are unnumbered and unindexed. Unfortunately, JD’s intentions to use the book for pithy quotations did not bear much fruit. He took care to number the first pages up to 299, and he prepared an alphabetical index in a separate notebook. But he composed only 28 entries, leaving most of the pages blank. Rather than reproduce the partial index, the terms have been added in square brackets as headings on the appropriate pages.

50

[Falsehood]

. Whate’er is false,
For its foundation presupposes Truth.
Immortality of the Soul.¹

55

[Conscience]

Tuta scelera esse possunt, secura non possunt. Sen[eca] Epist[le] 97²

58

Undated

[Cowards]

None are so apt to quarrel as Cowards.
All men woud be Cowards, if they durst.³

61[–62]

[Concord]

The Concord & Union of States & Families does not proceed from the Knowledge of particular things & the performance of ones Duty {in them} But from the Knowledge of Ourselves & of Universal things, which alone produces Charity the Mother of Union.⁴ For as the Offices of Life are different, The Husband may disagree with his Wife in her Business & She with him in his So that when the Wife takes Care & does what She ought to do, She may not be lov'd by her husband, nor he by his Wife, tho[ugh] doing his Duty, & what is Just.

The Cause of this is that Mankind in stead of taking Care of **themselves**, only take Care of what belongs to them & so the Mind is confin'd to the limited Knowledge of Particular things: But does a Man take Care of himself when he takes Care of the things that belong to him? Shoes belong to the feet but does a Man take Care of his Feet when he takes Care of his shoes? What is meant by taking Care? Is it not to make it better than it was? It is by the Shoemakers Art then, that We take Care of Our Shoes: But is it by the same Art We take Care of Our Feet? Or is it not by another, to wit, the {^X}Gymnastick, that We make our Feet better? [*in left margin:*] {^X}For Exercise strengthens the whole Body—} So then by the Gymn[astic]k Art We take Care of Our Feet, but by the Shoemaker's Art We take Care of the things that belong to Our Feet. Tis by the Gymnastick Art We take Care of Our Bodies & by the Weaver's Art & many others that We take Care of the things that appertain to Our bodies When therefore We take Care of the things that belong to Us, We do not take Care of Ourselves, because the Arts are different: But what Art is it by which We meliorate or take Care of Ourselves? The Shoemaker cant make our shoes better, unless he knows what a Shoe is, So neither can We make Ourselves better, unless We first know what We are. What are We then? The Shoemaker Who Uses his Knives & other Tools Is different from the things he uses: But the Shoemaker does not use his Tools only but his hands too, & his Eyes— Then Man is different from his Body, which is but the Instrument of his Soul. His **Soul** then is Man & of this We ought to take Care: How is this to be done? Suppose the {^X}Precept of

Delphos [*in left margin:*] {^X**Know thyself**}⁵ addressd to the Eyes, as it is to the Man, What shoud We think it requird of it? Shoud We not think it requird the Eye to look on itself in something in which the Eye might See itself? What thing is this? We may See Ourselves in a Looking Glass; but there is a little Part of the Eye, The **Apple** of it, that will serve this purpose: Therefore an Eye, to see itself, must look into another Eye, & into that Part of it in which all its Virtue, that is, its Sight resides

So the Soul to know itself, must contemplate the Divine Soul of Wisdom, of which Ours is but the Image.

Plato's First Alcibiades 211 &c—⁶

65

[Cunning]

The best Cunning is to have none at all. Plato.⁷

69

[Fame]

To despise Fame is to despise the Virtues by which it is acquird.
Tacitus.⁸

72

[Constitution]
[Government]

By **Constitution** We mean, whenever We speak with Propriety & Exactness, that Assemblage of Laws, Institutions & Customs, derivd from certain fixd Principles of Reason, directed to certain fixd Objects of Publick Good, that compose the General System, according to which the Community hath agreed to be governd.

By **Government**, We mean, whenever We speak in the same manner, that particular Tenor of Conduct, which a Chief Magestrate, & inferior Magestrates, under his Direction & Influence, hold in the Administration of Publick Affairs.

Dissertation on Parties.⁹

75

[Friends]

He that deals with those who are commonly calld his Friends, may always expect to be cheated by them—for it is a Tax laid on their Friendship—& their Acquiescence is the only Advantage to be hopd for from them, more than from a Stranger— **J.D.**

77

[Liberty]

Liberty is a tender Plant, which will not flourish unless the Genius of the Soil be proper for it; nor will any Soil continue to be so long, which is not cultivated with incessant Care. Variæ illudunt pestes; Mischiefs of various kinds abounds: & there is no Season in the Revolution of the Great political Year of Government, when We can say with Truth, that Liberty is entirely free from immediate, or remote Danger.
OldCastles Remarks.¹⁰

We have been surprizd, betrayd, forcd, more than once, into Situations little better than that of downright Slavery. But the Usurpations have not become Settlements. They have disorderd the Frame, but not destroyd the Principles of a free Government. Like cloudy Mornings they have soon passd over, & the Sun of Liberty has broke out again with double Force, & double Lustre. OldCastle—¹¹

80

[Life]

Life has often been compar'd to the Stage,¹² as to the Shortness of its duration, but I think as proper a Resemblance may be made as to the different Nature of the Scenes represented there: A Bad Life may be call'd a Tragedy, the Horror & Distress of which deepens towards the End— But a Good Life is a Comedy, which long shroud by the Clouds of Adversity, at last brightens up, & concludes with Peace & Happiness. **D.**

84

[Love]

Love is a Smoke, raisd by the Fume of Sight;

Being purgd, A Fire sparkling in Lover's Eyes;
Being vext, A Sea nourishd with Lovers Tears;
What is it else? A Madness most discreet,
A choaking Gall, & a preserving Sweet.
Shakespear—¹³

87

[Hospitality]

Alike he twæ{h}arts¹⁴ the hospitable End,
Who drives the Free, or stays the hasty friend,
True Friendship's Laws are by this rule exprest,
“Wellcome the coming, Speed the parting Guest”
Odyssey¹⁵

89

[Idleness]

Satius est— Otiosum esse quam nihil agere— Il vaut infiniment
mieux ne rien faire, que de faire des riens— Bell. Lett. 1–99¹⁶

91

[Fortune]

Fortuna vitrea est:;} tum quum splendet, frangitur.¹⁷ Publ[ilius]
Sirus¹⁸
He only changd Virtues, when Fortune changd her Countenance;
happy without Pride, unhappy with Dignity. Mons[ieur] Fléchier¹⁹

95

[Eternity]

The Greatness of our Knowledge of **Eternity** consists in the Smallness
of it. **JD.**

99

[Industry]

Nil actum reputans, si quid superesset agendum. Lucan²⁰

[Ignorance]

Plato

First Alcibiades 196

Faults in Life do not proceed from Ignorance alone, but from thinking we know things we do not: For the Man who is ignorant of the Act of Navigation will leave the Pilot to steer, & not intermeddle in thing he knows himself to be Ignorant of.²¹

[Envy]

Invidia est vitium eorum, qui nec cedere volunt, nec contendere possunt. Envy is the Vice of those who are too weak to contend, & too proud to submit.²²

[Criticism]

It is an unpardonable License wh[ich] Ovid takes of Joining two Ideas wh[ich] have no Connexion with Each other, by one Verb for the Verb must be taken in a different Sense when coupled with one of the Things, from what it has in Conjunction with the other, & has always a Mixture of the Pun: Thus in the Story of Phaeton—"Consiliis, non Curribus utere nostris" & again "pariterque animaue rotisque expulit aurigam."²³ In the Lighter forms of Poetry indeed, & more especially in the **Burlesque Epic**, this Affectation has its place, as in the Rape of the Lock—²⁴

"The sometimes Counsel takes, & sometimes Tea"²⁵

For the Writer's Intention is to divert & amuse, by confounding great things with small: But there is one Case in which this Double Sense of Words may be admitted even in serious Poetry; It is when besides the plain literal meaning, the mind is carried forward to some more illustrious & important Object; as in that Line of Virgil

"Altollens humeris famamque & fata nepotum."²⁶

We are not carried off from the Subject matter to the Observation of a Conceit, but to the Admiration of kindred Sublime Conceptions.

117

[Gratitude]

Many have done a just Act, many a generous, but very few a Grateful one. Dean Swift.²⁷

202

[Pleasure]

The Youth who baths in Pleasure's limpid Streams
At well judgd Intervals, feels all his Soul
Nervd with recruited Strength; but if too oft
He swims in sportive mazes thro[ugh] the flood,
It chills his languid Virtue. Elfrida—²⁸

205

[Society]

Society arises from the Seeds of Love & Charity implanted in the Soul: & Preservation was only a more remote Motive, which even necessarily supposes a precedent Good Will. Plato's Protagoras.²⁹

251

[Prayer]

The Persians Prayer to the Rising Sun—**Oh Thou** by whom **thou** art enlightend, illuminate my Mind, that my Actions may be agreeable to thy Will.³⁰

[*in left margin:*] Proverbs, 30.8. / Ecclesiastes, 7.11.³¹

Hail Father—i tho[ugh] above all Praises hear;
Grant Wealth & Virtue to thy Servants Prayer:
Wealth without Virtue but enhances Shame,
& Virtue without Wealth becomes a Name:
Send Wealth, send Virtue then: for joint they prove
The Bliss of Mortals, & the Gift of **Jove**.

281

[Temperance]

Temp'rance, not Abstinence, in every bliss
Is Man's true joy, and therefore Heav'ns command.
The wretch who riots thanks his God amiss:
Who starves, rejects the bounties of his hand.

Dods. Coll. 6 vol. 44.³³

289

[Virtue]
[Virtue & Vice]

The Priest of the Lord who follows the Precepts of the Gospel, may be killd, but he cannot be overcome— S^t. Cyprian³⁴

Vice proceeds from Ignorance, & is a fault of the Soul & it is wrong to attribute it to the Sensual Pleasures overcoming the Mind. Plato's Protagoras.³⁵ & See many Texts of Scripture exhorting Men to Knowledge & Wisdom, as Synonymous with Virtue.

291

[Transubstantiation]

Transubstantiation³⁶ is (in one respect) more reasonable than the Consubstantiation³⁷ of Protestants—for both they & Papists pretend the Paschal Lamb³⁸ to be a Type of the Supper—but the former allow that Supper to be only a figure of the Spiritual Body & Blood of Our Blessed Saviour— Whereas there is no Instance in Scripture of one figure's being the Anti-type of another—

All the Beginning of the Gentlemans³⁹ Oration is something like the Prologues of Bays,⁴⁰ wh[ich] might suit any other Play as well as that to wh[ich] they were prefixd For

A very small share of Understanding will inform anyone that the Point to wh[ic]h every thing in this Cause centers The North Pole of this Dispute, to wh[ic]h after rambling round the Whole Circle of Altercation, the Controversy must at last settle, is &c
==

The Law is already subject to many Charges: All the World rails at its Quibbles Quirks & Niceties, but I hope Your L[or]dsh[ips] will not lay an additional Burthen upon it & oblige Us to defend Inconsistences & Absurdities as well as Exactness & Caution: & the Precision & Forms of Our Ancestors I believe will be found less inconvenient, less troublesome, less dangerous than that Looseness & Uncert[ain]ty We their wiser Children long to introduce. {2 Ships setting out East & West &c⁴¹ Judges woud be Legislators w[ith]out an infinite Number of Rules:⁴² So in Rome. &c}

I give up the Point, I grant there are too many Rules too many Distinctions in the Law, but is it not then surprizing None of these coud suit the Gentleman but he must introduce a new Method of Plead[ing] never heard of before: He is in the fault of wh[ic]h he accuses Me, He is encreas[ing], He is adding to the Number of Distinct[ion]s While I am endeavouring to prevent Innovation & am content with those Rules already made.

Temporis filia Veritas.⁴³ Today is only a Discovery of Yesterday's Errors: It is so in all the Studies on which the mind of man employs itself: Instances; In Religion, Idolatry: in Philosophy, The Circulation of the Blood: In Astronomy, the Solar System: In Geography, The Discovery of a New World. So in Life, the Employments of Childhood are ridiculous to Manh[oo]d & the actions of Manhood lamented, thro[ugh]out our stay upon Earth.

ADS (PHi-Logan)

¹ Isaac Hawkins Browne, *Of the Immortality of the Soul*, transl. Richard Grey (London: B. Dod, 1754), 11.

² Lat. "Crimes may be safe (from discovery), but cannot be secure from anxiety." Sen., *Epist.*

³ Only the second line is from John Wilmot, second earl of Rochester, *A Satyr against Mankind* (London?: s.n., 1675?), 4. The first line appears to be JD's.

⁴ This language comes from the summary of "The ARGUMENT OF THE First *ALCIBIADES*," *The Works of Plato Abridg'd*, 2 vols. (London: A. Bell, 1701), 1:165–66. JD evidently used an edition of this work for his selections from Plato, though which specific edition is unclear.

⁵ “Know thyself” is a Delphic maxim that was apparently inscribed on the temple of Apollo at Delphi.

⁶ Plato (c. 428 – c. 347 BC) was a Greek philosopher. In *Works of Plato Abridg'd*, the discussion about the shoemaker begins on 1:211; the precept of Delphos, a reference to the inscription on the gate of the Temple of Apollo at Delphi, is on 1:219; the looking glass discussion, which includes language from a note, is on 1:219–20; and the quotation about the divine soul is on 1:221.

⁷ This is from the Dialogue called “Protagoras: Or, The Sophists”; see *Works of Plato Abridg'd*, 2:244.

⁸ This sentiment is from Tac. *Ann.*, 4.38.

⁹ Henry St. John, first viscount Bolingbroke, “LETTER X,” *A Dissertation upon Parties*, 2nd ed. (London: H. Haines, 1735), 108.

¹⁰ Henry St. John, first viscount Bolingbroke, “LETTER I,” *Remarks on the History of England* (London: R. Francklin, 1743), 8–9.

¹¹ Bolingbroke, “LETTER IV,” *Remarks on the History of England*, 50.

¹² William Shakespeare, *As You Like It*, 2.7.139.

¹³ William Shakespeare, *Romeo and Juliet*, 1.1.197–201.

¹⁴ The word should be “thwarts.”

¹⁵ JD quotes from Alexander Pope’s translation of Hom. *Od.*, bk. XV, lines 81–84. See Pope, *Odyssey*, 4:7.

¹⁶ Lat. and Fr. “It is better to be at leisure than to do nothing.” The complete Latin sentence is: “*Satius est enim, ut Atilius noster eruditissime simul et facetissime dixit, otiosum esse quam nihil agere.*” This quotation from the letters of Pliny the Younger is found in Charles Rollin, *The Method of Teaching and Studying the Belles Lettres, or An Introduction to Languages, Poetry, Rhetoric, History, Moral Philosophy, Physicks, &c.*, 2nd ed., 4 vols. (London: A. Bettesworth and C. Hitch, 1737), 1:99. The French translation is at 1:100.

¹⁷ Lat. Fortune is of glass; she glitters just at the moment of breaking. JD may have found this quotation from Publilius Syrus in *Essays of Michael Seigneur de Montaigne*, transl. Charles Cotton, 3 vols. (London: T. Basset, M. Gilliflower, and W. Hensman, 1685–86), 1:489.

¹⁸ Publilius Syrus (fl. 1st cent. BC) was a Syrian slave who was brought to Rome, where his master freed him because of his intellect. He became an author best known for his sententiæ, or maxims.

¹⁹ This quotation from Esprit Fléchier (1632–1710), bishop of Nîmes, was probably copied from Rollin, *Belles Lettres*, 2:177.

²⁰ Lat. “thinking that nothing was done, if anything remained to be done.” Lucan, *Pharsalia*, 2.657.

²¹ See *Works of Plato Abridg'd*, 1:192.

²² This passage is like one in Quintilian *Inst.* 1.1.17: *Inde invident humiliores (hoc vitium est eorum qui nec cedere volunt nec possunt contendere), rident superiorem, improbant boni.* Lat. “Thus, those who are beneath him felt a grudge against him (for those who are unwilling to yield and yet have not the strength to hold their own are always liable to his failing), while his superiors laugh at him and the good disapprove.”

²³ In Greek mythology, Phaethon was the son of the Oceanid Clymene and the solar deity Helios. Lat. “Make use of my advice not my chariot” and Ovid *Met.* 2.146, 312.

²⁴ Burlesque forms of literature tend to mimic their counterparts in coarse language. A comedic imitation of the more serious epic genre of poetry, a burlesque epic treats the serious lightly and vice versa.

²⁵ Alexander Pope, *The Rape of the Lock*, 2nd ed. (London: B. Lintott, 1714), 19.

²⁶ Lat. “lifting up on his shoulder[s] the fame and fate of his grandson.” Verg. *Aen.* 8. 731.

²⁷ Jonathan Swift (1667–1745), an essayist, was dean of St. Patrick’s Cathedral, Dublin.

²⁸ William Mason, *Elfrida: A Dramatic Poem*, 3rd ed. (London: J. and P. Knapton, 1752), 16.

²⁹ Here, JD quotes from one of the notes to the Dialogue called “Protagoras; Or, The Sophists,” *Works of Plato Abridg’d*, 2:254.

³⁰ Samuel Richardson, *The History of Sir Charles Grandison*, 7 vols. (London: S. Richardson, 1754), 2:13.

³¹ Prov. 30:8: “Remove far from me vanity and lies: give me neither poverty nor riches; feed me with food convenient for me”; Eccl. 7:11: “Wisdom is good with an inheritance: and by it there is profit to them that see the sun.”

³² William Dodd, *The Hymns of Callimachus, Translated from the Greek into English Verse* (London: T. Waller and J. Ward, 1755), 3.

³³ William Whitehead, “Elegy I. Written at the Convent of Haut Villers in Champagne, 1754,” in *A Collection of Poems*, 6 vols., ed. Robert Dodsley (London: J. Hughes, 1758), 6:44.

³⁴ St. Cyprian (c. 200–258) was an African who converted to Christianity and became bishop of Carthage. Although St. Cyprian was a skillful and prolific author with many surviving texts, JD most likely copied this passage from Rollin, *Belles Lettres*, 2:338.

³⁵ Here, JD’s comment echoes language from “The Introduction to Protagoras” in *Works of Plato Abridg’d*, 2:220–32, especially 2:226–27.

³⁶ Transubstantiation: “The conversion in the Eucharist of the whole substance of the bread into the body and of the wine into the blood of Christ, only the appearances (and other ‘accidents’) of bread and wine remaining: according to the doctrine of the Roman Catholic Church” (*OED*).

³⁷ Consubstantiation: “The doctrine of the real substantial presence of the body and blood of Christ together with the bread and wine in the Eucharist, as distinguished from *transubstantiation* in which the whole substance of these elements is held to be changed into the body and blood of Christ” (*OED*).

³⁸ Paschal lamb: “(a) the lamb slain and eaten at the Passover; (b) Christ; one of various symbolic representations of Christ” (*OED*).

³⁹ The following remarks appear to be JD’s response in court to a speech of the opposing counsel.

⁴⁰ In the theater, the prologue to a play might be delivered in a ritualized oration by an actor representing the playwright. He would wear a garland of leaves from the bay laurel tree (“bays”) to signify the playwright’s fame and repute as a poet. See Tiffany Stern, *Documents of Performance in Early Modern England* (New York: Cambridge University Press, 2009), 113.

⁴¹ This passage is reminiscent of an observation from William Guthrie, *A New Geographical, Historical, and Commercial Grammar; and Present State of the Several Kingdoms of the World*, 2 vols., 2nd ed. (London: J. Knox, 1771): “[I]f two ships should set out at the same time from any port, and sail round the globe, one eastward and the other westward, so as to meet at the same port on any day whatever, they will differ two days in reckoning their time, at their return” (1:39).

⁴² Apparently a reference to Blackstone: “Equity thus depending, essentially, upon the particular circumstances of each individual case, there can be no established rules and fixed precepts of equity laid down, without destroying it’s very essence, and reducing it to a positive law. And, on the other hand, the liberty of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge. And law, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law; which would make every judge a legislator, and introduce most

infinite confusion; as there would then be almost as many different rules of action laid down in our courts, as there are differences of capacity and sentiment in the human mind” (1 *CLE* 61–62).

⁴³ Lat. Truth is the daughter of time.

88

Draft of a “Discourse on Ejectments,” [n.d.]

This document addresses the application of an unidentified statute in an action for ejectment—a lawsuit brought to determine the right to possession of or title to land. The statute was likely “The Law About Seven Years’ Quiet Possession,” passed by the Pennsylvania Assembly on January 12, 1706, which provided that, with exceptions, “seven years’ quiet possession of lands within this province, which were first entered on upon an equitable right, shall forever give an unquestionable title to the same against all, during the estate whereof they were or shall be possessed.”¹ Here, JD argues that, although the statute should apply to a land dispute when the boundaries of the land are undisputed, a court should be able also to exercise its equitable powers in other circumstances, such as where boundaries between parcels of land are unclear or there are conflicting legal titles to the same land.

Discourse on Ejectments—

[*in top margin:*] Dont know what they mean by Same Title

~~I cant conceive why they shoud require more than is to be found:~~

~~It is laid down in sev[era]l books that Paym[en]t is a good Plea in Debt: & but I believe no man can find a Case reported where th[at] Point alone to this Purpose That an a[c]tion of Debt was bro[ugh]t ag[ain]st Def[endan]t who pl[ea]ded Paym[en]t provd it on Trial & Verd[ic]t [pro] Def[endan]t So it is an established Rule that the Stat[ute] of Lim[itation]s is a Barr but to expect Cases to report this~~

For to look for Disputes at concern[ing] when a Man takes Adv[antage] of the Statute of Lim[itation]s is the same th[ing] as to expect [Pro]of of a Murder {Crime} when a Man pl[ea]ds Guilty—for in both Cases the Plea precludes th[at] Consequence wh[ich] the G[entleme]n expect. How is it possible the Books shoud mention any Dispute relat[ing] to Bounds—when the very rely[ing] upon the Statute gr[an]ts them to be just as the P[la]intiff has describd them. If the Jury

finds the Def[endan]t's Poss[essi]on—he has a Verd[ic]t if the issue is fo[un]d ag[ain]st him the P[lain]tiff—has Jud[gm]ent & to require a mere matter {of fact} to be reported is [per]fect Fondness. But to suppose th[at] the Bounds never are disputed in Engl[an]d on the Stat[ute] of Lim[itation]s p[ro]vided is certainly—since as I have said it is the only Question th[at] can arise—but then it is with regard only to the P[lain]tiff Def[endan]t's Poss[essi]on: & this wo[ul]d afford very extensive Room for a {n} Equitable Construction in favour of the best Title with Us in America & Litton's Case² wo[ul]d be good Law & extremely applicable— [*in left margin:*] {Latches³ not the same as Inf[ringem]ts.} The Cases I mean are where 2 [Per]sons have Lands adj[oin]ing to one ano[the]r w[ith]out any Dist[inctio]n of Bounds—there because both may be said equally to occupy the Land that is not [par]ticularl[y] approp[ri]ated—the Law will will [*sic*] adjudge him to be in Poss[essi]on th[at] has the best Title. Sal.⁴ [*blank*]. & this wou[d] be observ[ing] the Rule with a [pro]p[er] Moderation, & exactly agreable to the Terms wh[ic]h the G[entlema]n use: for such Cases these wo[ul]d be {Bounds} wo[ul]d be uncertain & undetermind—& thereby an Opportunity given to do Justice to the But to stretch this Rule, where there is no Dispute of the Bounds where there has been noth[ing] but a sleep[ing] Title on one side, & uninterrupted Poss[essi]on for so long a Course of Years on the other—is for a Bench of Judges to Repeal the Laws of the Land—& to overthrow all the Securities of the Subject. Besides these Latches of the P[lain]tiff are not to be favou[re]d as the Latches of [Per]sons under Disabilities: For he h[as] always had the same Capacity of arriv[ing] at a certain Knowl[edge] of his Limits as at the Time of beg[inn]ing his Ejectment.

There are still 2 more Obj[ecti]ons to this Rule— The 1st is th[at] the Reason of it fails Where th[ere] is a Certainty of Bounds in America— The Conseq[ue]nce of wh[ic]h will be that this plain Statute that never had a Single Dist[inctio]n made upon it in Engl[an]d will be mangled with Us into 4 sev[er]al Div[isi]ons.

Between [Per]sons claim[ing] & {b}y the same Titles & diff[erent] Titles & Between Certainty of Bounds & Uncertainty of Bounds.

The other Obj[ecti]on is an ~~Absurdity~~ that ~~must arise from this Doctrin~~e {this Rule can only extend to Cases} where the Def[endan]t settles upon part of a Tract —So that the same Title extends to the Land possesse[d] by both— But suppose the P[lain]tiff has 2 [Par]cles

held by Diff[eren]t Titles & Def[endan]t enters into one entire [Par]cel—or sup[pose] the P[lain]tiff has but one Parcel & Def[endan]t enters into the Whole In such Case there will be no Dispute about the Bounds for they both claim exactly the same Land—& the P[lain]tiff's Poss[essi]on can have no manner of Relation to this &c—

AD (PHi-Logan)

¹ 2 *SALP* 237.

² Cary 6: “A Copyholder within age is admitted, and the Lord committeth the custody to the Mother of the Infant, whose under-Tenant cutteth down Timber Trees, which being presented, the Lord seizeth the Land for the forfeiture (during still the nonage) and keepeth it till he dyeth, and it descendeth to his Heire, who and his Father had kept it 40 yeares, and for that the Copyholder moved suite in the *Chancery* 29. yeares since which was now revived, and the forfeiture was taken during his minority, he was restored to his possession till the Lord should recover it for the forfeiture by the common Law, in the case of Mr. *Litton Mich.* 41. and 42. *Eliz.* Justice *Clench*, and the Masters.”

³ Laches: “Delay in asserting a right, claiming a privilege, or making an application for remedy, such as to bar its being granted. Also (in early use): negligence in the performance of a legal obligation” (*OED*).

⁴ Possibly a reference to 2 Salkeld 421, *Stokes v. Berry*, summer assizes, Lincoln (1699): “If *A.* has had Possession of Lands for twenty Years without Interruption, and then *B.* gets Possession, upon which *A.* is put to his Ejectment, tho’ *A.* is Plaintiff, yet the Possession of twenty Years, shall be a good Title in him, as if he had still been in Possession. Ruled *per Holt C[hief] J[ustice]*. The same Point was ruled by *Holt C[hief] J[ustice]* at Lent-Assizes for *Bucks*, 12 *W.* 3. because a Possession for twenty Years, is like a Discent, which tolls Entry, and gives a Right of Possession, which is sufficient to maintain an Ejectment.”

89

Draft of “An Act to Prevent Lawsuits Concerning Wills,” [n.d.]

In newly settled areas of America that lacked persons with legal training, inhabitants frequently drafted wills that did not meet strict legal requirements and consequently engendered lawsuits challenging their validity. This document, illustrative of the problems JD confronted in many of his legal cases, is a draft of a statute providing that, if a will disposed generally of any property without limiting language, the disposition of the property was to be regarded as absolute, or “an Estate in Fee simple.” JD may have used a 1540 royal statute as a reference.¹ No Pennsylvania or Delaware statute based on this draft was enacted.

An Act to prevent Lawsuits concerning Wills.

Whereas by the Statute made in the [*blank filled in:*] {thirty-second} Year of the Reign of Henry the eighth, {enables} Persons seized of any {Manors,} Lands, Tenements, or Hereditaments {,} {holden in socage, or in the Nature of any Tenure,} are enabled to dispose thereof by Will in Writing, {at their free Pleasure,} as by the said Statute {as therein} is provided, **And Whereas**, it has been constantly adjudged, that by Virtue of the said Statute, persons seized as aforesaid, might ~~dispose of their~~ devise Estates of Inheritance in ~~Fee Tail or~~ {Fee tail or} Fee simple, and that in construing Wills, the Intentions of the Testator{s} should be regarded, **And Whereas** in this newly settled Country, ~~persons designing to make their Wills, especially in Time of their Sickness, find a~~ {great} Difficulty very frequently {thro[ugh] the Difficulty of getting the Assistance of ~~Lawyers or~~ good Scriveners, {many} Wills are drawn [*in a?*] {inaccurately} drawn in [*an in?*] in an imperfect Manner, and {so that} very frequently the just Intention{s} of Testators is {are} defeated, Strife{s} excited between near Relations, Lawsuits multiplied, & Expences unnecessarily occasioned, for preventing these Mischiefs, **Be it enacted** &c That if any person shall hereafter give devise by his or her {Last} Will in Writing duely executed, give dispose {generally} of any **Manors** [*page break*] Lands Tenements or Hereditaments, without limiting the same expressly for Life, {or} Lives, or in Fee tail, every such general Devise shall give, and is hereby declared to give an {to the} Devisee an Estate in Fee simple.

AD (PHi-RRL)

¹ 32 Hen. 8, c. 1 (1540): "The Act of Wills, Wards and Primer Seisins, Whereby a Man May Devise Two Parts of His Land."

90

Legal and Political Notes on Pennsylvania, [n.d.]

These three sets of notes appear to be related in that they all suggest, to one degree or another, malfeasance in the Pennsylvania government. The first set is related to the Pennsylvania Assembly, regarding funding a militia and the William Smith libel trial (see docs. 1:44–57). The second set is also likely about the Smith trial, dealing as it does with treason and the power of Parliament. The final set concerns corrupt officials stealing money from the people and stating claims on a deceased person's estate. JD wrote all three sets on both sides of a single sheet, which was folded in quarto. The two sets on the verso are each written on one-half of the page on opposing sides and rotated, strongly suggesting a clear separation between them. The variance of

Undated

the ink and script on each third reinforces the likelihood that JD wrote these notes at different times.

[I]

- 1 — The Assembly claims the Distribution of Publick Money
Nay has raisd money itself £15000¹
- 2 — Chuse {Civil Officers} Sheriffs Coroners &c²
- 3 — Claims the Appointm[en]t of military³
- 4 — Offer extraordinary Powers to the Gov[ernmen]t & take away
Trial {by Juries}⁴
- 5 — Erect themselves into a Jurisd[icti]on—wh[ich] they will not
suffer to be ~~disputed~~—{inquird into}—charge with Crimes they
wont suffer to be disputed & give sentence from wh[ich] they will
not suffer an Appeal—⁵
- 6 — Call people to account even for words dropt in Conv[ersati]on
ag[ains]t their pretended Authority—&c &c⁶ [*page break*]

[II]

- 5 Vol. State Trials 110. 125—⁷ 151—164—⁸
8 Vol. 150. 164.⁹
2 Ins. 536.¹⁰
5 Mod. 84.¹¹
1 Strange 539.¹²
[*several blank lines*]

8 Vol. 150 Said by the Lords at the Conference
That tis the [par][ticu]lar Char[acte]r of that odious Court calld the
Inquisition, that nobody dares appear for, or resort to a [Per]son
impris[one]d there—but he is left to the mercy of that Court—¹³
That the Commitm[en]t of the Lawyers was not for licentious speech
as was insinuated at the last Conference—but for pl[ea]d[in]g on the
Return of the Writs of Hab[eas] Corp[us]— That the Lawyers are not
to be answerable for everything they argue—they are to do their duty
for their Client[s] & the Court is to judge of it.¹⁴

[III]

Q[uære] If an Off[ice]r may be indicted for Extortion in taking greater fees than are allowd by Statute— V[ide] Farr. 6 Mod. Raym—¹⁵

Q[uære] If Plene Adm[inistravi]t¹⁶ may be pl[ea]dded to Debt on Jud[gmen]t ag[ains]t the Adm[inistrat]or Saund.¹⁷

Q[uære] If Costs where the Referrees find only 6^d due on a bond.

AD (PHi-RRL)

¹ Possibly a reference to the Assembly's attempt to raise money for the king's use in 1754. See doc. 1:33, n. 22.

² Under the 1701 Charter of Privileges sec. 3, "the Freemen in each respective County ... may as often as there shall be Occasion, chuse a double Number of Persons to present to the Governor for Sheriffs and Coroners to serve for *Three* Years, if so long they behave themselves well" (*Collection of Charters*, 44). The Assembly passed laws in 1706 (2 *SALP* 272–75, "An Act for Regulating Electing of Sheriffs and Coroners"), and 1717 (3 *SALP* 138–40, "An Act for the Better Regulating of Elections of Sheriffs, Coroners, and Assessors") that defined more clearly the process for electing sheriffs and coroners. In 1752, the Assembly passed "An Act for Preventing Bribery and Corruption in the Election of the Sheriffs and Coroners Within This Province" (5 *SALP* 159–61) that fined candidates for office if they took any bribes (including alcohol) during the election.

³ The 1755 "Act for Better Ordering and Regulating Such as Are Willing and Desirous to be United for Military Purposes Within this Province" (5 *SALP* 197–201) gave the men mustered into companies the power to, "by majority of votes in the way of ballot ... choose [their] own officers" (5 *SALP* 198). If the governor disapproved of the men's choice, they could submit two more names for consideration (see 5 *SALP* 199). The Assembly did not pass another militia law until the 1777 "Act to Regulate the Militia of the Commonwealth of Pennsylvania" (9 *SALP* 75–94), which gave the governor the power to commission a lieutenant and sub-lieutenants of the militia, who "shall be respectively nominated by this house" (9 *SALP* 76).

⁴ Possibly a reference to the Assembly's denial of a trial by jury to both William Moore and William Smith in 1758. For Moore's address to the governor about the denial of a jury trial, see *PG*, Dec. 1, 1757. See also the headnote to "Documents from the William Smith Libel Trial" in Volume One of the present edition.

⁵ Possibly a reference to the Smith trial, during which the Assembly refused to allow Smith to challenge its authority to prosecute him, or its resolution that Moore's address was a libel. For JD's preparation for the case on these issues, see doc. 1:45. For his actual arguments and the Assembly's responses, see doc. 1:54.

⁶ Possibly a reference to JD's argument during the Smith trial that Smith should not be held responsible for words said during conversation with friends. See doc. 1:54.

⁷ 5 *State Trials* 110, 125, "*Proceedings in Parliament against Sir John Fenwick, Bar, upon a Bill of Attainder for High Treason*," 8 Mich. Will. 3 (1696). Fenwick, third baronet (c. 1644–1697), was a Jacobite conspirator executed for treason for his part in a plot to assassinate William III. If this document is JD's preparation for, or reflection on, the Smith trial, it is likely that he was particularly interested in the challenge by

member of Parliament for Buckingham, Sir Richard Temple (1634–1697), who disputed the Commons’ ability to pass a bill of attainder without a trial: “For to say this is a Trial before you the Commons, is a Mistake; you never did assume a Jurisdiction of trying any Person, nor can you: You may for your own Information hear what can be offered, but ’tis not a Trial” (110). It is also likely that JD found particularly salient the assertions by member of Parliament William Dolben that attainders were “Proceedings against all Law and Justice” and that “no Man shall be convicted or condemned for Treason, but upon the Testimony of two lawful Witnesses” (125).

⁸ Here, JD seems to have meant to cite to 8 *State Trials* 150, 164. See n. 9, below.

⁹ 8 *State Trials* 150, 164, “*Proceedings in the House of Commons, House of Peers, and in the Court of Queen’s Bench, in the Great Case of Ashby and White, &c.*,” 2 & 3 Ann., B.R. (1703). Beneath JD’s list of sources, he copied out three lines, slightly out of order, from the fifth resolution reported in the House of Commons on March 13, 1704 (150). On that day, the House of Lords addressed the queen. “The certainty of our Laws is that which makes the chief Felicity of *Englishmen*; But if the House of Commons can alter the Laws by their Declarations, or (which is the same thing) can deprive Men of their Liberty, if they go about to take the Benefit of them, we shall have no longer Reason to boast of that part of our Constitution.” The Lords further reported on the warrant’s allegations “that the commencing and prosecuting these Actions was a Contempt of the Jurisdiction of the House of Commons.” “Such a Jurisdiction was never claimed . . . till upon this Occasion; and if this Novelty of a Jurisdiction be founded on their new Authority of declaring, they will stand and fall together” (164).

¹⁰ 2 Coke, *Institutes* 536. Edward III “granted a special pardon to those of whom he had conceived so great displeasure.” Coke also notes that “either houses of Parliament being Courts may take voluntary oathes.”

¹¹ 5 *Modern* 84, “*Roe, Kendale, and others*,” Mich. 7 Will. 3 (1695). This case concerned a group of men who helped James Montgomery of Skelmorlie, fourth baronet (c. 1654–1694), a Jacobite conspirator and politician escape captivity in London for high treason. The court questioned whether the secretary of state who had committed them to prison had the power to do so. The solicitor general argued that in commitments for treason “the house of Commons may commit, and yet they cannot administer an Oath; so a Constable may commit without any Oath.”

¹² 1 Strange 539, *Dominus Rex v. Decan’ et Capitul’ Dublin*, Mich. 9 Geo. 1 (1722). This case considered the legitimacy of an award of peremptory mandamus—in this instance, a writ from the King’s Bench in Ireland admitting Robert Dowgate to his stall in the choir.

¹³ During the reign of Mary I, at least 290 Protestants, largely from the lower classes in southeast England, were executed for heresy after the adoption of an inquisitorial justice system between 1555 and 1558.

¹⁴ JD is referring to 8 *State Trials*, supp. 150, which documents the findings of a March 13, 1704, “free Conference” that was held “maintain a good Correspondence” between the House of Commons and House of Lords. The conference produced a series of resolutions; here, JD refers to part of the fifth resolution. The earlier reference he is referring to is likely that of March 22, 1697. See 8 *State Trials*, supp. 148–49.

¹⁵ 6 *Modern* 192–93, *Domina Regina v. Baines*, Trin. 3 Ann., B.R. (1704): “He was convicted before the Justices of Peace at their Quarter-Sessions, upon certain Articles of Misdemeanors in his Office of Clerk of the Peace.” The chief justice claimed that “it’s Extortion in Officer to take Fees when none is due, or more than is due, or before they are due.”

JD is possibly referring to 6 *Modern* 306–07, *Domina Regina v. Buck & Hale*, Mich. 3 Ann., B.R. (1704). In this case, two tax collectors were “adjudged to the Pillory” for unequally levying taxes and putting the money “in their own Pockets.”

Raymond, *Special* 216, unnamed case, Mich. 24 Car. 2, B.R. (1672): “The Lady Broughton, Keeper of the Gate-House Prison in *Westminster* ... was found Guilty; and her Crime was Extortion of Fees.”

¹⁶ Plene administravit: “A defence made by the executor or administrator of a deceased person’s estate against a claim made on the estate, in which it is pleaded that all assets have been exhausted and therefore that nothing remains to satisfy the claim” (*OED*).

¹⁷ JD is possibly referring to 2 Saunders 216: “Plene Administravit: Pleaded, and Judgment given thereon when Assets came to the Hands of the Administrator.”

91

**Notes for *Benjamin Enoch & Mary Enoch v. George Crowe et al.* and
Benjamin Enoch & Mary Enoch v. John Eccles et al., [n.d.]**

Suspecting that his death was imminent and not wanting to die intestate, in 1742, Andrew Stalcop, Jr., a yeoman, wrote his will. He and his wife, Hannah, who already had a four-year-old daughter, Mary, were expecting another child. The will stipulated that if the unborn child were a boy, he would inherit Stalcop’s land. If the child were a daughter, then Mary would inherit it. The child born in 1742 was indeed a girl, who was named Hannah. As was often the case with people writing their own wills, there was a lack of clarity. In question was when Mary could receive the land—at the birth of her sister or when Hannah reached her majority—and whether Mary had the right to receive rents from the land.

Now that her sister Hannah was married, Mary and her husband Benjamin Enoch, a cordwainer, engaged JD to represent them in suits against the men in possession of the land, George Crowe and John Eccles. George Read, Thomas McKean, and “Mr. J.” represented Crowe and Eccles. JD argued that both the land and the rents were conveyed by the will and that the conveyance to Mary occurred on the birth of her sister. On both questions, JD argued that Stalcop’s intention, expressed at the beginning of the will, to dispose of his whole estate supported JD’s interpretation of the will. If that intention were not given effect, JD argued, Stalcop would have died intestate as to a portion of his estate, creating a “Chasm,” which the law sought to avoid.

Benja[<i>min</i>] Enoch & Wife— ¹	}	Same Pl[ainti]ffs—	}
v		v	
George Crow & al[ia]— ²		John Eccles ³ & al[ia]	

Undated

What is Land but the [pro]fit or
Emol[umen]t aris[in]g from it—of
itself of no use

1.st— Question— Whether the Rent reservd {in Fee} past by the
Devise? Mo. 771. 2 Cro. 104. FitzG. 70. 288. 9 Mod. 78.⁴ Q[uære] What
is a Fee farm Rent—

Intention of Test[at]or to dispose of his whole Estate declar'd in the
Preamble— Barn. 14. 15. 3 P. Will. 295. 2 Str. 1020. Talb. Ca. 161. 284.
2 Vern. 690—⁵

By the Word “Rest” &c a Rev[ersi]on in Fee passes— 2 Vent. 286. 6
Mod. 111. 2 Ab. Ca. in Eq. 322. §15.⁶

Clayton 104. pl. 175.⁷

Meaning of Test[at]or the Pole Star— Co.⁸
to be spell'd out by little Hints— 1 Vent. 30.⁹

By Will Things of one Nature will pass by
Words meaning Things
of ano[the]r Nature— Sty. 279. Plow. 142.¹⁰

Diff[erence] between **Manor & Land** in all jud[icia]l Determ[inati]ons
2 Att. Pock. Comp. 301—¹¹ Yet by the Word Lands—a Manor
passes— 2 Vent. 286.¹²

The Word “Groundrents” will pass Lands—Str. 1020. Mo. 771.¹³
& ergo vice versa—

So the Word “Profits” will pass Lands—bec[ause] the Land is noth[in]g
but the [Pro]fits—& ergo vice versa—

2.^d Question— If the Estate vested in Mary on the Birth of her Sister?
or her Arrival at Age?

The Test[at]or meant 18—& then part of the Rent due,
the Residue may be releas'd

2 Mod. 289 {Dev[ise] over is good, tho[ugh] the Event never
in point happend}
Str. 1092 If the Est[ate] does not vest till 18 or 21—then the
Vide 2 Vern. Test[at]or dies Intestate till that Time, directly
723 Dev[ise] to contrary to his express Intention at the beg[in]nin[g]
one [Par]cener,

the same as to both—¹⁴ of his Will to settle his Est[ate] {Chasms {in Wills} to be avoided—} But if the unborn D[oughte]r was to take at 18 then no Chasm—
[in lower margin:] woud he give an old Horse & not the Land till the D[oughte]r comes to Ag[e] [*page break*]

Andre[w Stalcop]¹⁵ seizd of a Tract & Plant[ati]on cont[ainin]g 200 Acres.— Gr[an]ted 3 A[cre]s & 40 [Per][che]s¹⁶ to Rob[er]t Read¹⁷— reserv[in]g £3" 2" 6 Rent with a Clause of Distress—

M^r. Read— Talbot 161— Ibbotson v Beckwith— “touching my worldly Estate,”¹⁸ [pro]ves the Test[at]or had the Design of settling his whole Estate— Chasms to be avoided—& theref[ore] th[at] Constr[ucti]on

Obs[ervati]on— No Diff[erence]—
 Whether the Word “Estate” if usd at first be repeated {3 P. W. 295— Barn. 14. 15.} 2 Str. 1020. & all the Cases mention {the [Rent?] issuing of the Will}
 Obs[ervati]on— [Hale]¹⁹ the Devisee is one of the [Par][ce]ners²⁰ or Heirs—& theref[ore] the Appreh[ensi]on of disinherit[in]g an Heir fails—

app[rehension] of wh[ich] prevents the Est[ate] descending to the Devisee & the other Coheir (as here) Talb. Ca. 284—Tanner v Morse 2 Str. 1020—Maundy v Maundy to the same [Pur]pose—
 3 P. Will. 295. Tanner v Morse “Rest” a relative Term referr[in]g to the first Words—
 Barn. 14. 15. Tuffnell v Page—

Obs[ervati]on— In the Cases ment[i]one[d] an Est[ate] for Life wo[ul]d have past—if not in Fee—but here the Test[at]or woud have died utterly Intestate—as to the Rents if not [devisd?] to th[at?] notwithstand[in]g his express Intention to settle his Estate—

Not only the Words “temporal Est[ate]” relied on—but the Word “Settle”—wh[ich] is in our Case
 Held th[at] for thi{s}e{s} Reasons the Description “at Kirby Hall” extended to the whole Interest—

9 Mod. 78—Acherley v Vernon— Fee Farm Rents pass by Dev[ise] of Lands— And so do Lands contracted for—or any other Right out of Lands—

His not devis[in]g these Rents more unreasonable than

describ[in]g them as he has done—
If Lands pass by the Word Rents—then vice versa—
Rents pass by the Word Lands
So of the Word “profits”

Fitz. 70. 288.—Mandy v Mandy
Devise of “Ground Rents” passes
Lands—because of the Beg[in]n[ing]
wh[ich] shews an Intent to dispose of
his whole Estate—prefacing 2 Str.
1020. S. C. Farm passes both
Land & Rents

~~“Rest of my Est[ate]” means
not only the thing but the
Interest—here unnecessary as
to the Interest—because of the
Word Heirs~~

More 771 to the same [pur]pose
Kerry v Derrick tho[ugh] there the
Test[at]or seemd to distinguish
between the Lands & Rents— And
tho[ugh] a Writ of Err[or] was
adv[ise]d yet that impeaches not it’s
~~Credit~~ Auth[ority] Str. 1021.

~~Nor did it appear]~~
Woud have been absolutely
void for Uncert[ain]ty—if not
for the former [Union]
2 Closes calld Spring Close
No such Preface there as
here—
Clayton 104— Leak’s Case—

2 Vent. 286— Willars v [L]idcott²¹—
cites the Case of Wheeler v. Waldron—
that by the Words “rest of my Lands[”]
passes the Rev[ersi]on of a manor—
{No such preface there as here}
tho[ugh] there were other Lands to
satisfy the Testator’s Words— Manor
~~[illegible]~~{con}sists of Dem[esne] &
Serv[ice]s Fee farm Rents say the
G[entle]men—
2 Atty. Pock. Comp. 301. Manor
diff[eren]t from Land [*page break*]

Upland & Marsh—not more restrictive than
Est[ate] at Kirby Hall²² {The Rent issued out
of Upland— } Besides it was the Intent of the
Test[at]or to give Mary if the Child unborn [pro]vd
a D[aughte]r the same Est[ate] in the Plant[at]ion
th[at] he intended for the Son if the unborn Child
[pro]vd a Son {“all & singular my said
Plantation”²³— } {Not unequal for if this Child
had been a Son—Mary woud have had less than
Hannah²⁴ now has—}

2 Mod. 289. Testator never intended th[at] Eliza[beth?] to there was a [par][ticu]lar Dev[ise] should take the Fee—” theref[ore] invested in Benj[amin] who died before

Where there was a [par][ticu]lar Dev[ise] to the unborn Child—wh[ich] vested on its Birth & then Mary’s vested— tho[ugh] not to [pro]vide the [Pro]fits till 18—

So here a complete Devise of all his Estate

Defend[an]ts actually are now {& have been some time} seizd of the Land devisd to her—tho[ugh] now they say She ought not to take till 21— {If Mary did not take on the Birth of Hannah She took on her own arrival at 18—}

Lastly if the Est[ate] vested not in Mary till the full Age of Hannah—th[en] full Age was 18 & therefore our Dist[ress] regular

McK[ean]²⁵

{Reads Counsel’s arg[umen]ts not the Court’s put other Reasons into the Court’s mouth} [Per]sonal Est[ate] not [decaid?] {2 of the best Cows—}— Nor Rev[ersi]on of the 10 Acres gr[an]ted to the Wife—²⁶

Answ[er]— [~~illegible~~]{The} Will to be construed by itself—it dont appear he had more Cows—“2 of **the best**”— if none—then they shoud be bought— {Things ~~trifling~~ not worth load[in]g his Mind with in Extremity—& theref[ore] if a Cow or two are forgot—~~illegible~~{[those?]} shall be said to be forgot—}

It dont appear he had ¼ after his Debts paid wh[ich] he ord[er]ed to be paid—[per]sonal Est[ate] not sufficien[t]—& plain Intent not to leave any residue undivided—

==
Rev[ersi]on of the 10 Acres given to Mary—as in Vent. 286—

==

The Preamble common—not to be regarded—

Undated

Answ[er]— Chanc[ello]rs—& Judges of ano[the]r Opinion—& necessary th[at] there shoud be an establishd Rule {Thus they make Wills of Scriveners—not of decaad The Word “settle” not common—yet material}

==

Answer— The word Estate shoud be in the devising Clause

This not the Reason given by the Courts They speak of the Preamble—& in Reason no Diff[erence] whether the Word is at the Beg[inning] or devis[in]g Clause

dull Chancellors—

The Opinions by himself—on the Word Estate {at the Beg[inning] of Wills} Gr[an]ted— Decisive to shew an Intention to dispose of his Whole Estate

==

9 Mod. 78—Answer—Chanc[el]lor’s Op[ini]on gen[er]al & express {or any other Right out of Lands}—here a Dev[ise] to our Coheir as well as there to the Heir—

[vertically:]
{^x} the lands
Test[at]or ever
had—

All his [*illegible*]d lands wo[ul]d do—why not all his Plant[at]io[n] or stronger Words the rest of his Plant[at]io[n] [&c.] which included all X [*page break*]

[*in top margin:*] Intention Wills made in extremis to be fav[oure]d th[at] Test[at]or may} [*cont. in top margin:*] {not die Intest[ate] Where he shews a Disp[ositi]on to make a Will Res sacra vols. / Judges are to assist the Test[at]or to carry his Intent into Ex[ecu]tion}

Gen[er]al Rules establishd—necessary to be obs[erve]d that the Law may have Certainty in it— [*vertically in right margin:*] {Str. 1092—}

Greater Favour to Mary as She was known Plantation {all in one in Test[at]or’s Time} compreh[en]ds these Lotts wi[thi]n its Bounds

Plant[at]ion
gr[an]ted to be
equal to Land

A Com[mon] [Per]son might well supp[ose]
th[at] by a Dev[ise] of all the rest of his
Plant[at]ion {the Rents} woud pass & all his
Int[eres]ts therein— Nay he had a Right to the
Poss[essi]on on hon[ouring] paym[en]t of the
Rent— Words in Wills to be taken in Com[mon]
Parl[ance]—P.W.²⁷ What is Land but the Use
of [Pro]fits or Emoluments of it?
Recapitulates all his little pieces describ[in]g them
{mentions his Horse Cows &c}

2 Ab. Ca. in Eq.
31[1].²⁸
A Military
[pro]of
orig[inal]ly—
In Mod[ern]
Times Heir is to
[pre]serve the
Hon[our] &
Dign[ity] of the
Fam[ily]—

Heir not to be disinherited but by necessary
Impl[icati]on
Answ[er]— Here is [Pro]vision made for the other
Coheir— {wh[ich] is alone a suff[icien]t Answer—
Vide 2 Mod. 289—strong}
No disinherit[in]g for Pl[ainti]ff is one of the
Coheirs—born & known to the Test[at]or ~~and a
Devise to one Heir suff[icien]t to raise an Estate
by Impl[icati]on—~~ 2 Vern. 725—

==

But here the Reason of not disinherit[in]g the Heir
utterly ceases
Ab. Ca. in Eq. Gavelkind Lands 10 Mod. 418—²⁹
What is a necessary Impl[icati]on— So Barn. 14.
15.
==

M^r. J. The Determ[inati]on on the Word “Estate” taken
up in Talbot’s Time
==
This Word may shew an Intent to disp[ose] of all
his Est[ate]—& yet may not do it— Answ[er]—
True as {&} if the Test[at]or had Lands in K[ent]
& N[ew Castle] & devises all his Lands in K[ent]
to B—not mention[in]g his Land in N[ew
Castle]— But where the Words may possibly
extend to all—there the Decl[arati]on at the
Beg[inning] shall operate

==

Estate means either the Land or Int[eres]t & theref[ore] doubtful—

Answer]—Th[at] doubtful Word might have been satisfied with an Est[ate] for Life—but extended not only to the Land but a Fees[imple] bec[ause] of the declard Intent {So the Heir disinherited w[ith]out Necessity}— But here notwithstanding the express Intention—they say the Test[at]or died utterly intestate as to these Rents

==

As to the Case in 9 Mod. there were the Words “real Estate” Answer never ment[ione]d in the Arg[umen]t nor Decree—& the G[entlemen] assign the Reason—th[at] Reporters don’t state Cases exactly

The Decree calld **Dictum**—³⁰ this not his Reason— There was an intermediate Est[ate] for Life—Yet they past even a Reversion

[in right margin, center, cross-written:]

Enoch & Wife	}	Notes
[v]		
Crow & Eccles		

[page break]

2.^d Point

~~illegible~~{The} will is to be observd if the Test[at]or means by “full Age” any Age diff[erent] from Com[mon] Law—Obs[ervati]on—True We contend for this.

==

Test[at]or dont use “full Age at Law” as being—18—

Answer—He expressly does {“so as to inherit what I have here given them}

Also remarkable how he uses full Age if the Child shoud [pro]ve a D[oughte]r—

==

3 Cro. 368.³¹ Heir not to be disinherited but by plain Impl[ication] & the Intent to be collected out of the Will [page break]

[in right margin, center:]

Enoch & Wife—
v
Crow & Eccles— } Notes

AD (PHi-Logan)

¹ Benjamin Enoch (c. 1737–1792) was a Wilmington, Del., cordwainer. He later moved to North Carolina. Mary Stalcop Enoch, his wife, was born in c. 1739.

² Most likely George Crowe (died c. 1785), a Wilmington clockmaker and silversmith.

³ John Eccles was a Wilmington tailor.

⁴ Moore 771, *Kerry v. Derrick*, Mich. 44 & 45 E., B.R. (1603): “le sole point esteant si le devise del rent de 10l. en Surrey en le Parish de Egham, soit sufficient de passer al Margaret sa feme le terre m’ pur sa vie [LFr. the sole point being if the devise of the rent of 10 l. in Surrey in the Parish of Egham was sufficient to pass to his wife Margaret the same lands for her life].”

2 Croke 104, *Kerry v. Derrick*, Mich. 44 & 45 E., B.R. (1602): “*Trespass*. Upon a special Verdict the case was; A man let several Houses and Lands to several men, by several Leases for years, rending several Rents, amounting, *in toto*, to 10 l. *per ann.* and afterwards made his Will in this manner; *As concerning the disposition of all my Lands and Tenements, I bequeath the Rents of D. to my Wife for life, remainder over in Tail*: The Question was, whether by this Devise, the reversions did pass with the Rents of those Lands.... And after argument at the Bar, the Court resolved, that the land it self should pass by this Devise: For it appears, his intent was to make a Devise of all his Lands and Tenements, and that he intended to pass such an Estate as should have continuance for a longer time then the Leases should endure: And the words are apt enough to convey it according to the common phrase, and usual manner of speaking of some men, who name their Land by their Rents: Wherefore it was adjudged accordingly.”

FitzGibbon 70, *Mandy v. Mandy*, Trin. 2 & 3 Geo. 2, C.B. (1729): “Upon a feigned Issue a Special Verdict was found, that *J.S.* being seised of a Parcel of Ground call’d *Red-Lion Field*, in the Parish of *St. Andrew’s Holborn* in the County of *Middlesex*, devised the same for sixty Years, reserving 29 l. Rent *per Ann.* with Covenants on the Part of the Lessees to build house upon the aforesaid Ground, which they having done accordingly, *J.S.* by Deed indented and inrolled, conveys the Reversion of those Tenements to *Venterus Mandy*, and his Heirs, &c. by which he was seis’d of the said Reversion, with the aforesaid Rent incident in Fee.... The Court said this was a new and difficult Case, and desired it should stand over to the next term” (73).

FitzGibbon 288, *Mandy v. Mandy*, Pasch. 4 Geo. 2, C.B. (1731): “In this Case Judgment was given for the Defendants against the Heir at Law last *Trinity*-Term, by the unanimous Opinion of the Court, of which Judgment a Writ of Error was brought, and is now depending in the King’s Bench.” See also doc. 2:36.

8 *Modern* 78–79, *Moor v. Thompson*, Trin. 8 Geo. 1, B.R. (1723): “In an Action of *Trespass* brought by the Plaintiff in the Court of Common Pleas, for entering on his (the Plaintiff’s) Land 25 *March* 4 *Geo.* with a *Continuando* the said *Trespass* the 25 *March* 6 *Geo.* (which was two Years), &c. *ad damnum* [the part of a legal complaint that specifies damages], &c. The defendant justified, by the Command of one *Green*, the Plaintiff replied, and set forth a Surrender made to him (the Lands being Copyhold) and that he was admitted a whole Year before he brought this Action of *Tres-*

pass, &c. and at the Trial there was a Verdict for the Plaintiff; and the Jury gave Damages for that Year only, whereas the Plaintiff had declared for two Years Damages; and now upon a Writ of Error brought, it was insisted, that tho' the Plaintiff had a Verdict, yet if the Jury did not find enough, 'tis an insufficient finding, and here they had found Damages only for one Year, where the Plaintiff had declared for two Years Damages, and the Jury cannot sever the Damages for which the Plaintiff had declared; but this was over-ruled by the Court, and the Judgment affirmed."

⁵ Barnardiston 13–15, *Tuffnell v. Page*, Pasch. 13 Geo. 2, C.C. (1740): "The Beginning of the Will is, 'What Estate I have (I intend)'; and did indeed the Will rest only on that, that would not have been sufficient to have shewn the Party's Intention to have given the whole remaining Estate in the Land to *William Tuffnell*. But then the Will goes on with saying, 'All which I give to my dear Brother the Reverend Mr. *Anthony Springett*, at *Plumpton*, near *Lawson* in *Sussex*. After his Decease, my Desire is, that it should be disposed of after this Manner; To Mr. *William Tuffnell*, the Son of *Samuel Tuffnell*, at *Langley* in *Essex*, my Estate at *Kirby Hall*. . . . Now the introductory Clause in the present Case is decisive to shew the Testator's Intention to be to dispose of his whole Interest in the Land; the Words are, 'What Estate I have I intend to settle in this Manner.' This shews that he intended to dispose of his whole Interest in the Premises; and it is as strong as if the Testator had said, All my Estate I dispose of in this Manner; and the Case is stronger, because of the Word *settle*; by this Expression the Testator shews his Intent to make a Settlement of his whole Estate; and the Will does all that."

3 Peere Williams 295, *Tanner v. Wise*, Trin. 7 & 8 Geo. 2, C.C. (1734): "The Bill was brought by the Heir at Law of the Testator, suggesting, that the Testator's Widow had all the Writings and Title Deeds relating to the Inheritance of the Lands of which the Testator died seised; and that those Writings belonged to the Heir, who was intitled to the Lands." Lord Chancellor Peter King, first baron King, ruled: "in this Case, there was an Estate mentioned before by the Testator, (*viz.*) his temporal Estate, which brought it to signify the same, as if the Testator had said, 'I devise the Rest and Residue of all my temporal Estate,' which, without the Word *Heirs*, would have sufficed to pass all his Real Estate. Wherefore the Lord Chancellor with great Clearness decreed, that all the Real Estate did well pass by this Will to the Testator's Wife and her Heirs" (297–98).

2 Strange 1020, *Maundy v. Maundy*, Trin. 8 Geo. 2, B.R. (1735): "But upon argument in *C.B.* judgment was given against him in favour of the devisees, and now that judgment was affirmed in *B.R.* 1. Because the intention to pass all his estate was plain from the introductory part, where he declares his will was in respect of all his worldly estate, and that part where he says what his eldest son shall have, and no more" (1021).

Talbot 161, *Ibbetson v. Beckwith*, Mich. 9 Geo. 2, C.C. (1735): "It hath been said indeed, That in those Clauses the Fee doth not pass from the Force of the Words, but from the Nature of the Purposes, *viz.* That of paying Debts, &c. But still the Words are an Argument that he intended to pass the Inheritance, though not the whole Argument. It has been said likewise, That the Word *paying* does not of itself import a Fee; but still, In what Sense hath he used the Words *my Estate?* to pass the inheritance. As for Example; The Word is left out in the Clause now in Question; which is a very material and a very operative Word: But yet none will pretend that this Clause should be expunged by reason of the Omission of that single Word. Then the next Words are, *All my Estate, Northwith Close, North Close, &c.* without either *in* or *at*; which is likewise very imperfect: So that it must return to the Words *All my Estate to my Mother for Life, and to my Nephew Thomas Dodson after her Death*. Now although the word *Estate* may, in common Speech, not mean an Inheritance; yet it is clear he has meant it so here."

Talbot 284, *Tanner v. Morse*, Trin. 7 & 8 Geo. 2, C.C. (1734): “The Heir at Law brought this Bill against the Devisee and Executrix, who married the Defendant *Morse*, to have an Account of what Deeds, belonging to the Testator she had got in her Custody; and to set forth what Right she claimed to the real Estate of *Thomas Carter*, and whether he made any Will; and if so, to set it forth.... The Question was, Whether any, and what Estate in the Testator’s Lands passed to the Defendant by this Will?” Lord Chancellor King argued: “You have cited no Case where the Word *Temporal* has been used. But to me it seems clearly to relate to every Estate of this World: For there is nothing here but what is *Temporal*; every Thing must have an End; and the Testator certainly intended all the remaining Part of this Estate to go to his Wife, as well real and personal.... This Cause was reheard by the Lord *Talbot*, who affirm’d the Lord *King*’s Decree; and decreed an Estate in Fee-simple to pass by the Words of the Will” (286).

2 Vernon 690, *Beachcroft v. Beachcroft*, Trin. 1 Geo. 1, C.C. (1715): “The Question was, Whether a Moiety of the real Estate after Debts paid, passed to the Wife, or only half of the personal Estate; and the Case of *Bowman* and *Milbank* was cited, where the Words were, *I give all to my Mother*, and adjudged that only the personal Estate passed.”

⁶ 2 Ventris 286, *Willows v. Lydcot*, Mich. 1 W. & M., exchequer chamber (1689): The court held that “there were Words in the Devise to the Testator’s Wife, that would carry the Reversion of this House as an Hereditament undisposed of. *Vide* the case of *Wheeler* and *Walroon* in *Aleyn’s Rep.* 28. who having a Manor and other Land in *Somersetshire*, devised the Manor to *A.* for six Years, and Part of the other Lands to *B.* in Fee; and then comes this Clause,—and the rest of my Lands in *Somersetshire*, or elsewhere, *I give to my Brother*; and it was adjudged by the Word [*Rest*] the Reversion of the Manor passed as well as the Lands no devised before.”

6 *Modern* 111, *Countess of Bridgewater v. Duke of Bolton*, Hill. 2 & 3 Ann., B.R. (1704): “We will consider this Clause as qualified by the Words, *Not otherwise disposed of*; that is, taking it for granted that a Fee passes, by the Words, *The Residue of all my Estate real and personal*, how will it be if the Words, *Not otherwise disposed*, be added? And it has been insisted on, that these Rents are otherwise disposed of by the Will; for the Duke devises, That his Executors, if Occasion shall be, shall sell any Part, or all of them, for Payment of his Debts and Legacies: So this is said to be Disposition enough, to make them out of the general Clause of the Will.”

2 Bacon, *Cases* 322: “15. *J.S.* seised in Fee devises Houses to his Daughter (who was his Heir at Law) when she should attain the Age of twenty-one Years; and in another Clause he devises all the Rest and Residue of his Lands to his Wife, for Payment of his Debts and Legacies. The Daughter dies before twenty-one. Held that the Rents and Profits of the Houses should go to the Wife ’till the Daughter should have attained the Age of twenty-one Years.”

⁷ Clayton 104: “175. “Leakes Case”: A Man hath two closes called by the name of the Spring Closes, but originally these were but all one close and by his Will he devised a close called Spring-close, and it was held by the Judge that onely one of these closes shall passe, but the Jury found for both to passe against the opinion of the Court, and the Judge did not give the Jurors any rebuke for it.”

⁸ “The Intention of the Testator is called by my Lord *Coke*, the Pole Star, to guide Judges in the Exposition of Wills.” See Henry Swinburne, *A Treatise of Testaments and Last Wills*, 6th ed. (London: H. Lintot, 1743), 10. The term “Pole Star” does not appear in *Coke*. The true origin appears to be in Raymond, *Special* 428, *Brown v. Custer*, Hill. 32 & 33 Car. 2, B.R. (1683): “1. The intention of Devisor being the Pole Star

that ought to guide the Judges in the Exposition of Wills.” It is possible that Swinburne erroneously attributed this statement to 1 Coke, *Institutes* 42 a., which Raymond cites for another point in the next sentence.

⁹ 1 Ventris 30–31, “Mr. Justice Moreron’s Case,” Pasch. 21 Car. 2, B.R. (1669): “He brought Debt as Executor upon 2 *Ed.* 6. for not setting forth of Tithes due to the Testator. Upon *Non debet* pleaded, and a Verdict for him, it was moved in Arrest of Judgment, That this being a Forfeiture given by the Statute for a Tort done to the Testator, it could not be brought by the Executor. To which it was answered, That this Action was maintainable within the Equity of the Statute 4 *Ed.* 3. that gives the Executor Trespass *de bonis asportatis in vita testatoris* [Lat. goods carried away in the lifetime of the testator]. So an *Ejectione firmæ* lies upon an Ejectment done to the Testator, and Trover and Conversion, where the Conversion was in the Time of the Testator.”

¹⁰ Style 278–79, *Saunders v. Ritch*, Hill., B.S. (1649): “That Houses are not devisable by the name of lands, and he said, that the word wheresoever makes no difference, as to make the tithes pass; and though there be an implication and an intent in the Testator here to devise the tithes, yet that will not serve, because there wants words to express this intent, and thought this be in a will, yet there must be words used to support the intent of the Testator, for wills must be ruled by the rules of the Common Law.”

Plowden 142, *Browning v. Beston*, Mich. 2 & 3 Philip & Mary, B.R. (1554): “Wherefore the Law will take one Word for another to supply the Intent of the Parties. And so in our Case where the Words are, *if it shall happen that the said annual Rent and Farm of 37 l. 3 s. 4 d. be in Arrear*, it shall be taken for the said *Sum of 37 l. 3 s. 4 d.* if it is not a Rent in Fact.”

¹¹ 2 Mallory 301: “Things more worthy are to be placed before Things that are less so, as a *Castle* before a *Manor*, a *Manor* before a *Messuage*, a *Messuage* before a *Toft* or *Mill*. Things *general* before *particular*, as *Land*, which is the *Genus*, before *Meadow* or *Pasture*, which are the *Species*.”

¹² For 2 Ventris 286, see n. 6, above.

¹³ For the case of *Maundy v. Maundy*, see n. 5, above. The court ruled in part that “The limitation is to the younger children and their heirs; which cannot take effect, if their interest is only during the continuance of Rent. And nothing is more common, than for people to speak of their ground rents, when they mean the houses and lands out of which they issue.” See 2 Strange 1021.

¹⁴ 2 *Modern* 289, *Taylor v. Biddal*, Hill. 29 & 30 Car. 2, C.B. (1678): “*Richard* the Testator dies, *Benjamin* dyed before he came to the Age of 21 years, living *Robert Wharton* his Father, afterwards *Robert* dyed. And the Question was, Whether the Lessor of the Plaintiff as Heir to *Elizabeth* or *Mary* either as Heir to her Brother *Benjamin*, or as Heir of the Body of *Robert*, should have this Land?” The court ruled “That *Elizabeth*, the general Heir had only an Estate for years till *Benjamin* should or might be of Age: And so by the Opinion of the whole Court Judgment was given for the Defendant” (293).

2 Strange 1092–93, *Andrews v. Fulham*, Trin. 11 & 12 Geo. 2, B.R. (1738): “That *Robert Waith* being possessed of leasehold mesuages in *London*, by his will in 1686. devised the same to his wife for life, and after her decease to such child as she is not supposed to be *enseint* of, and to the heirs of such child for ever, provided that if such child as shall happen to be born shall die before twenty-one, having no issue, the reversion of one third shall go to my wife and her heirs, one third to my sister *Elizabeth* and her heirs, and the remaining third to my sister *Anne* and her heirs.... After two arguments the Chief Justice delivered the opinion of the court. That though formerly it was doubted, whether a devise to an infant *en ventre sa mere* was good; yet it is now

clear, that where it is *per verba de future* [Lat. by the words of the future tense], it will take effect.”

² Vernon 722, *Hutton v. Simpson & ux'*, Mich. 3 Geo. 1, C.C. (1716): Thomas Addison had two daughters, one of whom died before her father. The court ruled that the daughter's death made the devise to her in the will void, “and that her Son could not take Heir of her body, but the Estate was to have vested in the Mother.” The lands then went to the living sister, “although the *Lord Chancellor* at the same Time declared, it was not only against the Intention of the Testator, but also against the express Words of the Will, and also against a Maxim in Law, That an Heir is not to be disinherited without express words” (723).

¹⁵ Probably Andrew Stalcop, Jr. (d. 1742), a Wilmington yeoman, and Mary Stalcop Enoch's father.

¹⁶ Perch: “A measure of area (of land, brickwork, etc.) equal to a square perch, varying according to the local linear perch but later standardized at 1/160 of an acre, or 30¼ square yards (approx. 25.3 square metres)” (*OED*).

¹⁷ Robert Read, a weaver, was an early settler at Wilmington, and a signer of the 1736 petition for a borough charter.

¹⁸ *Talbot* 157, 160–61, *Ibbetson v. Beckwith*, Mich. 9 Geo. 2, C.C. (1735): “*Thomas Beckwith* made his Will in the Words following, *viz.* ‘As touching my worldly Estate, wherewith it hath pleased God to bless me, I give, devise and dispose of the same in the Manner following....’ The Question turns intirely upon the Construction of the Words of the Will, what Interest was intended to *Thomas Dodson*, whether an Estate for Life, or in Fee? In order to come at the Testator's Intent, the whole Complexion of the Will has been very properly taken into Consideration on both Sides; and it has been said, that the first Words, *Worldly Estate*, were used only to shew, that what he was then doing was *animo Testandi* [Lat. with intention of making a will]; but not intended by him to reach to the Whole of his Estate. As to that, I am of Opinion, that these Words prove him to have had his whole Estate in his View at that Time. Indeed he might have made but a partial Disposition; but if the Will be general, and that taking his Words in one Sense will make the Will to be a complete Disposition of the Whole, whereas the taking them in another will create a Chasm; they shall be taken in that Sense which is most likely to be agreeable to his Intent of disposing of his whole Estate.”

¹⁹ Probably Mathew Hale.

²⁰ Parcener: “A person who shares equally with another or others in the inheritance of an estate from a common ancestor; a coheir” (*OED*).

²¹ That is, *Willows v. Lydcot*.

²² JD's reference to upland and marsh is from 2 Mallory 301; see n. 11, above. For the reference to Kirby Hall see Barnardiston 13–15 at n. 5, above.

²³ This and subsequent quotations of the testator's will evidently come from Andrew Stalcop, Jr.'s will of February 1741/42, which has not been found.

²⁴ Hannah Stalcop (1742–1802) was the youngest daughter of Andrew Stalcop, Jr., and Hannah Stalcop. In 1763 she married Andrew Crips, a cordwainer.

²⁵ Probably Thomas McKean.

²⁶ Hannah, the widow of Andrew Stalcop, Jr., had by 1759 married a man named Abraham (Abrahams). She later suffered from mental illness and stayed with the Enochs, who obtained the ten acres in payment for her debts and transferred it to the Crips in 1770. See *PG*, Aug. 20, 1767; Delaware Land Records, Roll No. 16, De-Ar.

²⁷ For 2 Strange 1092, see n. 14, above. JD is likely referring to 1 Peere Williams 199, *Nichols v. Hooper*, Pasch. 11 Ann., C.C. (1712): “But where a Legacy is given by a Will, to commence upon this Contingency ... *If J.S. shall die without Issue*, this shall be taken according to common Parlance, (*viz.*) Issue living at his Death; for, in com-

mon Parlance, if *J.S.* leaves Issue, he does not die without Issue; and it cannot be intended that the Testator designed, whenever there should be a Failure of Issue of *Thomas*, (which might be 100 Years hence,) that then these Legacies, which were meant only as *personal Provisions*, should take Effect.” See also 2 Peere Williams 370, *Attorney General v. Gill*, Trin. 12 Geo. 1, C.C. (1726): “A Will ought to be taken agreeable to the Intent, and such Intent must be construed according to common Parlance.”

²⁸ Here, JD is referring to 2 Bacon, *Cases* 311: “In the Case of a Devise there is no Purchaser, not Contract, to Family to be provided for; yet here it is said the *Intent ought to govern, but then it must be a manifest and certain Intent*, and not an arbitrary one: It must be according *as it appears upon the Will, and according to the known Rules of Law*; it is *not to be left to a Latitude*, and, *as it may be, guess'd at.*” On p. 313 he notes, “A Limitation to one to take and enjoy the Profits of an Estate during his Life, and *after his Decease, to the Heirs Male of his Body*, would make an Estate-tail, where nothing appears that explains the Testator’s Intention to the contrary, otherwise not.”

²⁹ 10 *Modern* 417, 418, *Willis v. Lucas*, Trin. 4 Geo. 1, C.C. (1718): “It was urged in Favour of the Wife, That by a necessary Implication in the Meaning of the Law, was not to be understood a natural Necessity, that the Estate could go no where else; but a Necessity arising from the plain Intention of the Testator in his Will.... It was also insisted upon, That Part of these Lands being in *Kent*, must be taken to be in the Nature of Gavelkind [‘often used to denote the custom of dividing a deceased man’s property equally among his sons,’ (*OED*)], and then all the Sons and their Representatives make but one Heir, in which Case the Descent must be intire.... Lord *Parker* was of Opinion, That the Wife ought to have an Estate for Life by Implication, the Heir at Law being excluded by the Annuity.”

³⁰ Dictum: “An expression of opinion by a judge which is not essential to his or her decision as to the particular case. Cf. *obiter dictum n.* Such statements are not, under the doctrine of precedent, absolutely binding on lower courts although they will often be regarded as having persuasive authority” (*OED*).

³¹ 3 Croke 369, *Spirit v. Bence*, Hill. 8 Car. 1, B.R. (1632–33): “They all agreed, That *the words in a Will which disinherit the Heir at the Common Law ought to have an apparent intent*, and not to be ambiguous and doubtful; and that the intent ought to be collected out of the words of the Will.”

92

Notes for *John Price v. John Crosby*, [n.d.]

In this lawsuit, John Price sought to recover rents from his deceased wife’s property, owed by John Crosby. He claimed that the right to these rents had been given to his wife by her first husband’s will and then to him in her will. JD represented the defendant, Crosby, and his notes set forth two arguments against Price’s claim.

His first argument was substantive: the wife’s right to the rents was not an interest that she could leave to her second husband. JD argued that it was not her first husband’s intention to allow her to give her interest in the rents to a “Stranger.” According to JD, the first husband made his intent clear in several ways. The word “Use” in the provision of the will giving her the rents demonstrated that he meant particularly

for his wife to benefit from the rents, insofar as one cannot use something after one's death. This term is opposed to the phrase "Right & [Pro][per]ty" in the provision of the will giving her "Moveables," that is, personal property. It is also opposed to a later provision of the will in which he gave her, during her lifetime, the real estate generating the rents in the event of his son's death. If the will were interpreted as giving her the right to transfer an interest in the rents, this would result in her having that right longer if the son lived than if he died.

The second argument was procedural. JD explained that a demand for payment of the rents sought in the lawsuit was required to bring the lawsuit, but none had been made.

John Price—¹
v
John Crosby² } 2 Points

First— The Wife did not take an Interest by the Will transmissible to her second Husband— {that is, Whether Test[at]ors I[n]tent[i]on P[la]intiff a Stranger shall have the Rents since her Death— Injury to Child if our Constr[uct]ion [pre]vails— a {A}nswer— greater Injury
==

if C[rosby]'s prevails

Second— A Demand of the Rent necessary to maint[ai]n this Action—

As to the First—

The Use of a thing is merely [per]sonal—the Word is completely fulfilld by confining it to the [Per]son mentiond— & certainly is extended beyond Truth— by say[ing] the Wife has the Use, after her Death {or if She grants it to a Stranger & dies—}— Seems like the Case of a Dev[ise] dur[ing] decent Behav[iou]r 2 Ab. Ca. in Eq. 362.³

Bro. tit. Dev[ise] 15{3}. Owen 33. Plowd. 521-522. Cro. Car. 346.⁴

~~March 106~~⁵ 3 Will. 336.⁶ {One who has a use only} must sign an Inventory—

Nay the Word [Pro]fits will not give a transmissible Interest except they are expressly devised to the Wife— 2 Leon. 221. 3 Leon. 78—~~pl.~~ 118.⁸

Testator's **Intent &c**

If the 2^d. Husb[an]d can take this Dev[ise] as an Int[eres]t—then the Wife might have gr[an]ted her Int[eres]t to any Stranger— Can it be imagin'd th[at] the Testator intended when he gave the Use {& Education &c} to his Wife— that he gave it to a {h}er 2.^d Husb[an]d or a Stranger— Especially when he knew the Difference of Terms—& in the Line before gave her **Right & [Pro]p[er]ty** in the Moveables— Vide Will—

*which {Clause} distinguishes this from every Case that can be quoted—& [pro]ves that the Test[at]or intended her **at most** but an Estate for Life—{& shews whom he preferd after her Death—}
[vertically:] Vide Mo. 753 that the strong Word "**Profits**" made only a Confidence there being a Circumstance to shew the Test[at]or's Intent to be so— So here the Line preced[ing] & Subsequent Gift—⁷

What makes his Intention still plainer is, that in the *latter Part of his Will—where he [pro]vides in Case of his Sons Death—& therefore in that Case intends to encrease {the Term of} his Wife's Estate—he gives the Real Estate to her—{only} 'during her Lifetime'— So th[at] if Peter should die—She could hold it no longer than for Life—

But by the Constr[ucti]on contended for— instead of {the Term of} her Estate being increas'd on his Death—it extends further by his Living, than it could possibly have done by his Death—

at wh[ic]h is directly contrary to the Test[at]or's Intention—& therefore cannot be admitted—

Taking this to be a Term for Years—as contended it is exting[uis]h'd by the Estate for Life— Co. Litt. 338. b. Bro. title Extingt. 50, 2 Nels. Ab. 820.⁹

==
All the Cases where such a Dev[ise] has surviv'd have been—Dev[ise] of the Land itself—or of

Vide Viner tit. the Rents & [Pro]fits—wh[ich] is a Dev[ise] of
Dev[ise] 285. 291. Co the Land itself— Sal. 228. 2 Vent. 357. 5 Mod.
Lit 25. 26.¹⁰ 63. Mo. 635. 1 Brownl. 79. 3 Leon. 78. Heb.
285.¹¹ Nay the Word [Pro]fits will pass the
Land in a Deed—Co. L. 4. b.¹²
No Instance where the Word “Use or
Occup[at]ion” carried the Est[ate] to any other
than the [per]son mentiond—wh[ich] it may
{not} Do as [illegible] [page break] as in 8 Co.
95— b— & Cro. Car. 368.¹³

~~Ano[the]r material Distinction between the [pre]sent Case, & any
that can be quoted is—th[at] here the Test[at]or dev[ise]s all his real
Estate to his Son immediately— & in the Cases cited only—“when he
comes &c” wh[ich] shews than in Case of any Accident by the Wife’s
Death—the Son was not to have it [“]untill the Time mentiond”— 1
Ab. Ca. in Eq. 194 at the Bottom—¹⁴~~

[several blank lines]

Second Point— There ought to have been a Demand of the Rent to
maint[ai]n this Action—Owen 111. Vent. 259. Hutt. 114. Co L.
144. &c (Mo. 636. but here it was pleaded there was no Dem[and]
Q[uære] Pleas in [pre]sent Case) 1 Roll. Ab. 460— sec. Q¹⁵

[in lower margin:] If the Lease is void, the Obl[igati]on is void
likewise— Viner title Oblon—67. Bro. {title Oblon. 88.} 88. 2 Saund.
414. Brownl. 79. Owen 111. Hutton 114.¹⁶

AD (PHi-Logan)

¹ John Price (died c. 1784) was a resident of Ridley Township, Chester (now Delaware) Co., Pa.

² John Crosby (1721–1788) was a Quaker ironmonger and quarry owner of Ridley Township. He represented Chester Co. in the Pennsylvania Assembly between 1768 and 1771.

³ 2 Bacon, *Cases* 362: “6. *J.S.* devises *5 l. per Annum* to his Nephew *A.* (without adding to his *Executors or Administrators*) to be paid Half-yearly during the Life of the Testator’s Wife, on Condition he behave himself civilly to her, for he was a very lewd dissolute Man, and made his Wife Executrix, and died. The Nephew died, and his Wife (the Plaintiff) was his Administratrix, and brought this Bill *in forma pauperis* [Lat. in the manner of a pauper], to have the Payment of the *5 l. per Annum* during the Life of the Testator’s Widow. But *per his Honour*, this is a *personal Bequest* to *A.* and it is *upon Condition he demean himself civilly to the Testator’s Wife*, which cannot be after he is dead. Bill dismissed.”

⁴ 1 Brooke 229: “13. Trespas ... et puis son decess de estre dispose par ses executors al opes de parochias del B. inperpetuum sic nota q le proprietie ne fuit devise, mes la

occupation et concordat tempore H. 8 et E. 6 deste boe ley que le occupation poet issent remaine [LFr. Trespass ... and after his decease to be disposed by his executors to the use of the parish of B in perpetuity thus note that the property was not devised, but the occupation in accordance in the time of H. 8 and E. 6 of this good law that the occupation may thus remain].”

Owen 33, Trin. 7 Edw. 1, C.B. (1565): “Note by *Dyer*, that the Lord *Fitz-James*, late Lord chief Justice of *England*, did devise his land to *Nicholas Fitz-James* in taile, with divers remainders over, and in the same devise he devised divers Jewels and peeces of Plate, viz. the use of them to the said *Nicholas Fitz-James*, and the Heires Males of his body. In this case it was the opinion of the Court, that the said *Nicholas* had no property in the said plate, but only the use and occupation. And the same Law where the Devise was that this Wife should inhabit one of his houses which he had for terme of years, during her life, because the Wife takes no interest in the terme, but onely an occupation and usage, out of which the Executors cannot eject her during her life, but *Walsh* held the contrary.”

Plowden 521, 522, *Welcden v. Elkington*, Pasch. 19 Edw. 1, C.B. (1577): “But admitting that the Wife had not the whole Estate in the Term given to her by the express Words of the Will, but that the Words (*that the Wife should have and occupy all the Tenements for as many of the Years as she should live*) shall be interpreted not to give her the Term itself, but only the Occupation thereof, yet the other Words, by which the Testator gave the Residue of the Years unexpired, after the Death of the Wife, to *Francis* his Son, imply that the Wife should have the Term during her Life, and by Implication they amount to a Gift of the Term to the Wife for her Life.... And inasmuch as the Intent of the Testator is evident by these Words, it is the Office of the Court, as *Anderson* and *Manwood* said (and as *Mounson* Justice also afterwards said to me) so to marshal and construe the Words that the Intent may take Place, and the Thing be effected, and not destroyed, if any Sense at all can be made of them by Law.”

3 Croke 346, *Lord Hastings v. Sir Archibald Douglass*, Trin. 8 Car. 1, B.R. (1632): “And where the Civil Law saith, That she may make a Will in the life of her Husband of her *Paraphernalia*, yet the Common Law (whereby we are to be guided) is expressly contrary to it; that she may not make a Will of any goods without her Husbands Assent, and then it is as his own gift: But of an obligation or things in action, a Wife may make Executors by assent of her Husband, and may make her Husband her Executors.”

⁵ March 106, Trin. 17 Car. 1, C.B. (1641): “183. A Prohibition was prayed unto the Counsell of the Marches of *Wales*, and the Case was thus, A man being possessed of certain goods devised them by his Wil unto his wife for her life, and after her decease to *I.S.* and dyed. *I.S.* in the life, of the wife did commence suit in the Court of Equity there to secure his Interest in Remainder, & thereupon this Prohibition was prayed.” The judges granted “a Prohibition, and the reason was because the devise in the remainder of goods was void.”

⁶ 3 Peere Williams 336, *Slanning & al' v. Style*, Mich., 7 Geo. 2, C.C. (1734): “The next Question was, touching the Annuity of 40 l. per Annum given by this Will to the Widow for her Mother's Life, charged upon the Residue of the Personal Estate; and here, forasmuch as the Personal Estate was liable to be in a short Time wasted, (possibly by the Husbands of the Wives to whom the Testator gave the Residue) and the Widow by that Means to be deprived of the benefit of this Annuity, which the Testator intended should be duly secured, and paid to her quarterly for her Maintenance in all Events; therefore it was insisted, that the Husbands of the Wives should give some Security for the Payment of the same.”

⁷ Moore 753, *Griffith v. Smith* (n.d.).

⁸ 2 Leonard 221, Pasch. 16 Edw. 1, B.R. (1574): “In an Action upon the Case, the Plaintiff declared, That *B.* by his Will, did devise to each of his daughters, he having two daughters, 200 l. and that the survivor should have the whole; and shewed further, that one of his two

daughters died, and that *B.* made his wife his Executrix, and died, and that the said wife took to husband the Defendant; and further declared, That the Defendant in consideration of all that, and that the Defendant should take the surviving daughter to wife, and in consideration that the Defendant has Assets to pay all Debts and Legacies, &c. did promise to pay the Plaintiff 400 *l.* at four severall days. . . [A]nd it was found for the Plaintiff.”

3 Leonard 78: “By his last Will, willed, That his Lands should descend to his Son; but willed, That his Wife should take the profits thereof until the full age of his said Son of 21 years to maintain, and bring him up, and died; The Wife took Husband, and died, during the nonage of the Son: It was the opinion of *Wray and Southcote*, Justices, That the second Husband should not have the profits until, &c. For nothing is devised to the Wife but a Confidence; and she is as a Guardian or Bailiff, to aid the *Enfant*, which by her death is determined, and cannot accrue to the Husband; But if the Husband had devised the profits of the Land to the Wife, until the age of the *Enfant*, for to bring up and educate, *Ut supra*. *Wray* said, The same amounted to a devise of the Land and so a Chattel in the Wife, which should accrue to the Husband.”

⁹ 1 Coke, *Institutes* 338 b.: “The second diversity is, that for the benefit of an estranger the Estate for life is absolutely determined. And if he in the reversion make a lease for years, or grant a Rent-charge, &c. and then the Lessee for life surrender, the lease or rent shall *commence maintainant*.”

1 Brooke 315: “50. Home ad leas pur terme dans et puis prist interest pur terme de vy pur prender effect maintenant le leas par ans est extinct [LFr. A man has a lease for a term of years and then takes an interest for a term of life for present effect, now the lease for years is extinct].”

2 Nelson 820: “1. Where-ever the Freehold cometh to the Term, the Estate for Years is extinguished; as where Lessee for Years, Remainder in Tail to his Heirs, made a Feoffment to *B. G.* to the Use of him in Remainder, who entered; adjudged, that the Feoffment was good, tho’ made by one who had only an Estate for Years; for by the Entry of him in Remainder, he was remitted to his Right Estate, and the Term for Years was extinct.”

¹⁰ 8 Viner 285–86: “4. A. devised, that his Lands should descend to his Son, but he willed, that his Wife should take the Profits thereof, until the full Age of his Son, for his Education and bringing up, and died; the Wife married another Husband, and died before the full age of the Son; and it was the Opinion of *Wray and Southcote* Justices, That the second Husband should not have the Profits of the Lands until the full Age of the Son.”

8 Viner 291–92: “13. A Man devises Lands to his Wife until his Son shall attain the Age of 21 Years, and then to his Son and his Heirs; the Son dies at the Age of 13. The Question was, If the Estate devised to his Wife did determine by the Death of his Son at 13 Years of Age, or should continue till the Son might have attained his Age of 21 Years by the Effluction of Time? *Harcourt C.* of Opinion that the Wife’s Estate did determine by the Death of the Son, and differs from *Boraston’s Case*. Co. for there the Devise was to Executors for Payments of Debts otherwise unprovided for, but here the Wife comes in for her Thirds, and that is a sufficient Provision for her in the Eyes of the Law.”

1 Coke, *Institutes* 25 a.: “If a man devise lands to a man, and to the heirs males of his body, and hath issue a daughter, which hath issue a son, this son shall be inheritable, and notwithstanding in a gift in taile the law is otherwise, and that by the opinion of all the Judges in the Exchequer Chamber. But I hold this case to be ill reported, unless you will refer the opinion of the Judges to the gift in tail last mentioned. For first, albeit a Devise may create Inheritance by other words than a gift can, yet cannot a Devise direct an inheritance to discend against the rule of Law. Secondly, there is no intent of the Devisor appearing, that the son of the daughter should, against the rule of law inherit.”

1 Coke, *Institutes* 26 a.: “If lands be given to the husband and the wife, and to the heirs of the body of the survivor, the gift is good, and the survivor shall have an estate tail in general, but the estate tail vesteth not till there be a survivor.”

¹¹ 1 Salkeld 228, *South v. Alleine*, Trin. 7 Will. 3, B.R. (1695): “In Ejectment upon a Special Verdict the Case was, That *J.S.* being seised of Lands in Fee, 29 Car. 2 devised all the Rents and Profits of such Lands to *Sarah Birch*, Wife of *William Birch*, during her natural Life, to be paid by his Executors into her own Hands, without the intermeddling of her Husband, and after her Decease, he devised them unto and amongst *J.B. M.B.* and *R.B. &c.* The Question was, Whether by this Devise *S.B.* had the Lands themselves? And Mr. *Northey* argued she had; for by the Words, *Rents and Profits.*”

2 Ventris 357, *West v. The Lord Delaware*, Mich. 34 Car. 2, C.C. (1682): “That upon a Marriage agreed to be had between him and the Daughter of one Mr. *Huddleston*, with whom he was to have 20000 *l.* Portion, the Lord his Father articed to settle Lands of such yearly Value for the Wife’s Jointure, for their Maintenance, and the Heirs of their Bodies, &c. That the Wife being now dead (and without Issue) and no Settlement made, the Bill prayed an Execution of the Articles, and a Discovery of what Incumbrances there were upon the Lands settled... *Nota*, If a Man deviseth, That such a Sum of Money shall be paid out of the Profits of his Lands, and the Profits will not amount to the Sum, in such Case the Land may be sold.”

5 *Modern* 63, *Bush v. Allen*, Mich. 7 Will. 3 (1695): “The Point is this: A Man deviseth to *Jane Shore* the Wife of *J.S.* the Issues and Profits of certain Lands to be paid by his Executors: Whether this be a Devise of the Land to her for Life, is the Question; or whether the Executors shall receive the Profits to the Use of the Devisee? Chief Justice. To be paid by the Executors to her, shews the Testators Intent, That the husband should have nothing to do with it. Why should not this be a Devise to the Executors for her Life, upon Trust to pay the Profits to her? and this is fully to perform the Will; the Intent of which was to exclude the husband wholly.” Judgment was for the defendant with the chief justice dissenting.

Moore 635, *Rayman v. Gold*, Hill. 34 Edw. 1, C.B. (1592): “Si le devise des profits fuit devise del terme mesne, et agree que cy [LFr. If the devise of the profits was a devise of the same term, and it was agreed yes].”

1 Brownlow and Goldesborough 79, *Balder v. Blackborn*, Trin. 16 Jac. 1, C.B. (1618): “An Action of Debt brought for Rent reserved upon a Lease for years, the Case: this Land was devised to a Woman in this manner, that she should have the profits of the Land untill the Daughter of the Devisor should be eighteen years old; and the Woman made the Lease in question reserving Rent, and afterwards married, and then died; and if the Husband after her Death should have the Land untill the Daughter of the Devisor came to eighteen years old, was the question, and adjudged he should hold the Land.”

Hobart 285, *Balder v. Blackborne*, Trin. 17 Jac. 1 (1619): “*Balder* brought an Action of debt against *Blackborne* for twelve pound, and declared upon a Devise made by the Plaintiffe to the Defendant of one Messuage, &c. the 14. day of *May*, Anno 15. *habendum usque Festum sancti Michael* [Lat. to be held until the feast of St. Michael], next following, and so from year to year, &c. yielding twenty four pound Rent *per annum*, &c. Upon *Nildebet per patriam* [Lat. he owes nothing by the jury] pleaded, the Jury found a special Verdict, that one *John Wells* was seised of the said Messuage, &c. in Fee, and held the same in Soccage, and by his last Will in writing, devised the same Land &c. to *Anne* his daughter, and to her Heirs for ever, at the full age of 18. years.... And without much difficulty or doubt, the Court upon view and reading of the Verdict, gave Judgement for the Plaintiffe. For it is a plain term given to the Wife to her own use, which accrues to the Husband, and the keeping and education of the Child is not of such particular privity, but it may be performed effectually by another.”

¹² 1 Coke, *Institutes* 4 b.: “But if a man seized of lands in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery *secund’ form’ Cartæ* [Lat. according to the form of the deed], the whole land it self doth pass, for what is the lands but the profits thereof, and thereby Vesture, herbage, trees, mines, and all whatsoever parcel of that land doth pass.”

¹³ 8 Coke, *Reports* 95 b., “Matthew Manning’s Case,” Trin. 7 Jac. 1 (1609): “[I]f a Man makes a Lease for Years, on Condition, that if he do not such a Thing, the Lease shall be void, and afterwards he grants the Reversion over, the Condition is broken, the Grantee shall take Benefit of this Condition by the Common Law, for the Lease is thereby absolutely void; but in such case, if the Lease had been for Life, with such Condition, the Grantee should not take Benefit of the Breach of the Condition; for a Freehold (of which a *Præcipe* [‘A writ demanding action or an explanation of non-action’ (*OED*)] lies) cannot so easily cease; but is voidable by Entry, after the Condition broken, which cannot by the Common Law be transferred to a Stranger.”

3 Croke 368, *Spirt v. Bence*, Hill. 8 Car. 1, B.R. (1632–33): “Error of a Judgment in the Common Bench, in an Ejectione firmæ; where, upon a special Verdict, the Case was: Thomas Cann, being seized in Fee of divers Messuages and lands holden in Socage, and having three Sons; Thomas, Francis, and Henry, deviseth his Lands in this manner, I Devise to Thomas my Lands in Horton, to him and his Heirs Males of his body; Remainder to Francis and his Heirs. . . . I will, That my wife Margaret shall have the use and keeping of my son Henry, and of all the premisses to him bequeathed, during her natural life, paying to him yearly for his maintenance eight pounds, trayning him up in learning, and what more for her own pleasure.” The court ruled in part: “a Feoffment with warranty being by Tenant for life, to bar the Reversion, is not favoured in Law. And when it is to the use of himself and his wife, and to the use of his right heirs, the warranty is destroyed *quoad* [Lat. with respect to] him who created it, and never by any means may bind him in his life” (371).

¹⁴ 1 Bacon, *Cases* 194–95: “3. If a Man devises Land to his Wife, till his Son comes of Age, to provide his Children with Necessaries; though the Wife dies before the Son comes of Age, yet her Interest does not determine by her Death, because it was not a Matter of mere Confidence, but shall go to her Executors; but if the Devise had been, that his Land should descend to his Son, but that his Wife should have the full Profits thereof, until the full Age of his Son, for his Education; here is nothing devised to the Wife but a mere Confidence, that she shall take the Profits for the Education of the Son; and by the Will she is but in Nature of a Guardian or Bailiff, for the Benefit of the Infant, which determines by her Death.”

¹⁵ Owen 111, *Stroud v. Willis*, Pasch. 38 Edw. 1, B.R. (1596): “A man makes a Lease generally, and the Lessee is bound to pay the Rent in such manner as it was reserved, there such Rent ought to be demanded, otherwise the Obligation is not forfeit, and the demand ought to be upon the Land.”

1 Ventris 259, *Norton v. Harvy*, Pasch. 26 Car. 2, B.R. (1674): “The Case was, An Executor being possessed of a Term let Part of it, reserving a Rent and died. And the Question was, Whether his Executor should have the Rent or the Administrator *de bonis non*? [‘Of the goods not administered. When an administrator is appointed to succeed another, who has left the estate partially unsettled, he is said to be granted “*administration de bonis non*,” that is, of the goods not already administered’ (*BLD*)].... [An] Objection against the Action was, That here in the Declaration, being in Covenant for Non-Payment of Rent, there is not any Demand alledged. But that was answered, because the Covenant was to pay such a Sum for the Rent expressly; but if the Condition of a Bond be for Performance of Covenants express’d in such a Lease, one of which is for Payment of Rent, in that Case the Bond will not be forfeit without a Demand; and of that Opinion were the Court.”

Hutton 114, *Lamb v. West*, Trin. 8 Car. 1, C.B. (1632): “Sir John Lamb Knight, brought Replevin against *Thomas West*, and count, that the Defendant took his Beasts at *Blisworth*, in quodam loco vocat. *Thorny Close*. The Defendant made cognizance as Bayliff to Sir *William Sheapherd*, and derived Title by a Lease to *Michael West* for ninety years, if he and *Thomas West* the Defendant, and one *Hutton West* should so long live: And the said *Michael*, 19 Aprilis, An. 20 Jac. granted a Rent-charge of ten pounds per annum to the said *William Shepherd* and his Executors, out of the place in which, &c. for the residue of his Tearn, to be paid at the house of *Thomas West* in *S*. And the said *Mich*. agreed, that if the Rent be arrear by eight and twenty daies, being lawfully demanded at the said house, he should forfeit twenty shillings for every day, that it should be arrear, and if it be arrear by six months, being lawfully demanded at the said house, then he might distrain for that, and the *Nomine pænæ* [Lat. in the name of a penalty]: And for Rent arrear by a year after demand due &c. he makes Conuzance; And thereupon the Plaintiff demurred generally. And after many Arguments at Bar, the Justices delivered shortly their opinions severally, and all agreed that it is a Rent-charge: and then a Distresse is incident to a Rent-charge, which is in its creation a Rent-charge; as well as if one makes a Lease for life or years, rendring Rent, and if it be lawfully demanded, then it shall be lawfull to distrain for it.”

1 Coke, *Institutes* 144 b.: “The Grantee hath election to bring a Writ of Annuity, and charging the person only, to make it personal, or to distrain upon the Land, and to make it real. But if a man grant a Rent charge to a man and his heirs, and dieth, and his wife bring a Writ of Dower against the heir, the heir, in bar of her Dower, claims the same to be an Annuity, and no Rent charge, yet the wife shall recover her Dower, for he cannot determine his election by claim, but by suing of a Writ of annuity.”

Moore 636, *Mellow v. May*, Trin. 34 Edw. 1, C.B. (1592). It is unclear exactly to what JD is referring on this page, which contains a general discussion of leases. It is possible he is referring to this passage: “si le lease fuit bone de commencer a die datus, quel est jour a vener: et resolved que fuit bon quia livery fuit execute aps le jour del date, mes si devant ne sroit [LFr. if the lease was good to commence on a given day that is a day in the future, and resolved that it was good when livery was executed after the day of the date but if before it would not be].”

1 Rolle, *Abridgment* 460: “12. Si home fait leas rendant rent, et covenant per l’Idendenture de leas a paier le rent existent legitime petit et enter en un obligation a performer les covenants, le lessee nest lie a paier le rent sans un demaund [LFr. If a man makes a lease to pay rent and covenants by the indenture of the lease to pay the rent being lawfully pleaded and enters an obligation to perform the covenants, the lessee is not bound to pay the rent without a demand].”

¹⁶ 16 Viner 67: “Debt upon an Obligation for Payment of Rent reserved upon a Lease for Years made by the Plaintiff to the Defendant; the Defendant said, that before that the Plaintiff any Thing had, J.N. was seised and had Issue the Plaintiff and two other Daughters and died; and the Plaintiff entered into all and leased to the Defendant rendering the Rent, and he was bound to pay it, and before any Day of Payment the two other Daughters enter’d, Judgment si Actio [Lat. if the action]. And the best Opinion was, because by the Entry into two Parts, the Rent shall be apportioned, and the Defendant has not paid the third Part of the Rent according to it, therefore the Obligation is forfeited.”

2 Brooke 105: “88 ... si home soit oblige in un obligation depend sur covenants ou sur lease sil poet avoid le lease ou covenants donques ce est avoidance del obligation [LFr. If a man is obliged for an obligation depending on covenants or upon a lease, if he may avoid the lease or covenants it follows that this is an avoidance of the obligation].”

It is unclear to what JD is referring. The citation suggests 2 Saunders 414, *Dom' Arlington v. Merricke*, Pasch. 24 Car. 2, B.R. (1672), which documented a dispute over “Henry Lord Arlington *Postmaster-general to the King's most excellent Majesty*,” appointing “Thomas Jenkins *to be his Deputy-Postmaster of the Stage of Oxon in the County of Oxon*” (411).

For 1 Brownlow and Goldesborough 79, see n. 11, and for Owen 111 and Hutton 114, see n. 15, all above.

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Notes for *King v. Harlan*, [n.d.]

These notes relate to an indictment alleging that a person named Harlan unlawfully took possession of another person's land by forcible entry. The notes do not indicate the jurisdiction in which the land was located or what JD's role was, but it is likely that the land was in Delaware and that JD represented Harlan. The notes do not discuss the facts of the case against Harlan, but rather review judicial decisions interpreting the requirements for an indictment under the Forcible Entry Acts of 1429 and 1623, suggesting that JD drew upon the 1741 Delaware act “*against forcible Entry*,” which referenced the English laws. JD possibly argued that the indictment in Harlan's case was insufficient and should be quashed.¹

Dominus Rex versus Dorney— 12 Mod. 417.²

An Inquisition of forceable Entry was quashd, for that it did not appear what Estate the Party on whom the Entry was made had; for if he were Tenant at Sufferance³ it woud not lye. The same Point adjudgd in The Queen vers[us] Depuke 11 Mod. 273.⁴

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The K[ing's] B[ench] has no Original Jurisd[icti]on in Forc[ible] Ent[ry] & Det[aine]r 6 Mod. 91.⁵

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An Inquisition of Forc[ible] Ent[ry] & Det[aine]r must shew what Estate the Party disseisd⁶ had in the Land—& if he were a Copy holder⁷ or L[ess]ee for Years—it is enough to say he was expelld {21 J. 1. c. 15.}⁸ But if he were a Freeholder⁹—then on 8 H. 6. c. 9¹⁰—You must alledge a Freehold & Seisin¹¹ in somebody—& if the Entry was on a Ten[an]t for Years—You must say it was made into the Freehold of [*in left margin:*] {*} A. in the Poss[essi]on of B. & this Term **Disseisin** is a Term of Art not to be supplied by any other. 7 Mod. 123. 116—Holt C. J. 3 Sal. 169.¹²

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Inquis[iti]on of Forc[ible] Ent[ry] & Det[aine]r quashd—the Estate not appear[in]g—it being only that the Def[endan]ts “in Messuag[ium] existens a Schoolhouse, adtunc existens Tenem[en]tum de JS. intraver[un]t & the said JS. disseisit, expulsum & ejectum extratenuere.[”]

[“]And JS. was but perhaps Ten[an]t at Will, wh[ich] is not w[ith]in any of the Statutes.[”] L^d. Raym. 610.¹³

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20 Years Poss[ession]

Descent Cast—

1st— The Lands &c must be [par]ticularly descr[ri]bd Hawk. P. C. 147.

2^{ly}— The Jury must find that the Land is the Freehold of the [Per]son whose it is alledgd to be—or their Verd[ic]t on **Oath** will be larger than their Evid[ence] {Hawk— 153.} Else what need of th[at] [par][ticu]lar manner of sett[ing] forth the Offence—supra *. Hawk. {147.} 151. {153.}¹⁴ What Hawk. says. pa. 148—is to be understood of Pleading.¹⁵ The Stat[ute] does not [pro]hibit one who has always been in poss[ession] to maintain the same with Force. 149. 143.¹⁶ Never fully settled th[at] Ind[ictmen]t of forc[ible] Det[aine]r w[ith]out a forc[ible] Ent[ry] good. 150.¹⁷ Tho[ugh] 3 Years poss[ession] will excuse {Yet a better Title will excuse more. Hawk. 153.}

No Restit[ut]ion can be awarded unless it appear by the Ind[ictmen]t that the Wrongdoer continueth his Poss[ession] at the time of finding the Ind[ictmen]t Hawk. P. C. 150.

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If a Man’s Wife Children or Serv[an]ts continue on the Land he is not ousted of his Poss[ession]. Burnes 17. Dalt. c. 132.¹⁸ [page break]

King v Harlan

Cases transcribd.

Forceable &c—Entries

Q[uaere]. If the Ind[ictmen]t shoud not mention the Land to be the Freehold of Harlan in the Poss[ession] of Gibson? 7 Mod. 116. 123. 3 Sal. 169.

AD (PHi-Logan)

¹ 8 Hen. 6, c. 9, and 21 Jac. 1, c. 15; “An Act Against Forcible Entry, Barratry, Maintenance, Champerty and Embracery,” *LGD* (1752), 211, 212.

² 12 *Modern* 417, *Dominus Rex v. Dorney*, Mich. 12 Will. 3, B.R. (1700). JD quotes the full report of this case.

³ Sufferance: “The condition of the holder of an estate who, having come in by lawful right, continues to hold it after the title has ceased without the express leave of the owner” (*OED*).

⁴ 11 *Modern* 273, *Queen v. Depuke*, Hill. 8 & 9 Ann., B.R. (1710): “Mr. *Raymond* moved to quash an Indictment of forcible Entry; which sets forth, that the Defendant enter’d forcibly into the Close of *J.S.* and turned him out; whereas before the Time *J.S.* *Possessionatus fuisset de Termino ult’ elaps’* [Lat. he would have taken possession of the lease]; his Exception was, that the Estate of *J.S.* should have been particularly set forth, for he might have been Tenant at Sufferance; and it has been often adjudged, that Tenant at Sufferance is not within the Statute of forcible Entries; likewise he said, that by the Word *fuisset*, it does not appear, but that the Estate of *J.S.* was determined before the Entry. *Ergo* quashed *per Cur’*; Holt *absente*.”

⁵ 6 *Modern* 91, “Sutton’s Case,” Hill. 2 & 3 Ann., B.R. (1704). Sutton had been marshal of the court, but due to non-attendance he was replaced, after which Sutton asked the court to “quiet the Possession till the Title were legally settled.” The Court replied that it had “no original Jurisdiction of Forcible Entry: *Et currat Lex* [Lat. the law shall apply], for it’s a Question of Right between two contending Officers.”

⁶ Disseise: “To put out of actual seisin or possession; to dispossess (a person) of his estates, etc., usually wrongfully or by force; to oust” (*OED*).

⁷ Copyhold: “A kind of tenure in England of ancient origin: tenure of lands being parcel of a manor, ‘at the will of the lord according to the custom of the manor’, by copy of the manorial court-roll” (*OED*).

⁸ 21 Jac. 1, c. 15 (1623): “An Acte to enable Judges & Justices of the Peace to geve Restitucion of Possession in certayne Cases,” that is, the Forcible Entry Act.

⁹ Freehold: “Permanent and absolute tenure of land or property with freedom to dispose of it at will” (*OED*).

¹⁰ 8 Hen. 6, c. 9 (1429), “The Duty of Justices of Peace where Land is entered upon or detained with Force.”

¹¹ Possession.

¹² 7 *Modern* 123, *Domina Regina v. Taylor*, Hill. 1 & 2 Ann., B.R. (1703): “Indictment of Forcible Entry upon the Statute of 8 H. 6. c. 9. without saying the Party had been seiz’d and disseiz’d by Force, and it was quash’d *nisi* [‘Of a decree, order, rule’ (*OED*)] before.” John Holt, lord chief justice, ruled: “if it be an Entry upon a Lessee for Years, you must say, the Entry was made into the Freehold of *A.* in the Possession of *B.* and that so he disseised *A.* and of Necessity there must be a Disseisin of the freehold laid; and upon Restitution the Possession is restored to the Lessee, and the Freehold to the other; and on this Statute, Disseisin is a Term of Art, not to be supplied by any other Word.”

7 *Modern* 115, *Taylor v. Griffith*, Mich. 1 Ann., B.R. (1702): “Indictment of Forcible-Entry and Detainer, concluded *contra Pacem* [Lat. against the peace] of the late King and present Queen.” Holt ruled: “The conclusion is very improper, but there are too many that way to reverse them all. But it was quash’d upon the Objection, That it did not appear what Estate the Party had, whether Freehold, for Years, or at Will, and so the Court could not tell what Execution to award; but if the Estate were set out, perhaps the Possession should be restor’d to one, and the Freehold to another: And here besides it was not said, That there was a Disseisin of him that had the Freehold, and it was quash’d” (116).

3 Salkeld 169, *The Queen v. Griffith et al.*, Mich. 1 Ann., B.R. (1702): “Indictment for a Forcible Entry quashed, for not setting forth, that the Party was *seised* or *disseised*, or what Estate he had in the Tenement; for if he had only a Term for Years, then the Entry must be laid *into the Freehold of A. in the Possession of W.R.* and the Restitution must be accordingly: The Word *Seisin* is a Term of Art in this Case, it being upon the Statute of *H. 6.* but the Case in *Popham* was upon the Statute of *21 Jac.*”

¹³ 1 Raymond, *Cases* 610, *Rex v. Dorny*, Mich. 12 Will. 3 (1700): “Mr. *William Thompson* moved for the quashing of an inquisition for a forcible entry, for that, it did not appear what estate the tenant in possession had.” Holt ruled that, “there ought to be a positive charge of a disseisin; but it is put only adjectively, and an expulsion is not laid; but that *J.S. disseisit. et eject. extratenuere* [Lat. he dispossessed and ejected him]; which is a conclusion without sufficient premises. And therefore the inquisition was quashed.”

¹⁴ 1 Hawkins 147: “It hath also been resolved, That the Tenement in which the Force was committed, must be described with convenient Certainty, for otherwise the Defendant will neither know the special Charge to which he is to make his Defence, neither will the Justices or Sheriff know how to restore the injured Party to his Possession.”

1 Hawkins 151: “To whom such Restitution ought to be made; it hath been holden, That it shall only be given to him who is found by the Indictment to have been put out of an actual Possession, and consequently that it shall not be awarded to one who was only seized in Law.”

1 Hawkins 153: “Also if one who has the mere Right to Lands, have so long neglected to recover the Possession thereof, till in Judgment of Law he hath no more right to such Possession, till he have recovered it by Action, than a mere Stranger, there doth not seem to be any Reason that he should have more Advantage against a forcible Detainer, than is he were a meer Stranger.”

¹⁵ 1 Hawkins 148: “It hath been also resolved, That an Indictment, on 5 or 15 *Rich. 2.* needs not shew who had the Freehold at the Time of the Force, because those Statutes seem equally to punish all Force of this Kind, without any Way regarding what Estate the Party had on whom it was made; yet it seems, That such an Indictment ought to shew that such Entry was made on the Possession of some Person, who had some Estate in the Tenements, either as a Freeholder or Lessee for Years, &c. for otherwise it doth not appear, that such Entry was made injurious to any one.”

¹⁶ 1 Hawkins 149: “It hath been resolved, That an Indictment of a forcible Detainer, without shewing that the Defendant made an Entry into the same Lands, is not good, because the Statute doth not prohibit one who hath always been in Possession, to maintain the same with Force.”

1 Hawkins 143: “And the said Proviso was farther enforced and explained by 31 El. 11. by which it is declared and enacted, That no Restitution upon any Indictment of Forcibly Entry, or holding with Force, be made to any Person, if the Person so indicted, hath had the Occupation, or been in quiet Possession, for the Space of three whole Years together.”

¹⁷ 1 Hawkins 149–50: “*Where any doth make forcible Entry in Lands and Tenements, or other Possessions, or them hold forcibly*; by which it appears That a forcible Detainer is a distinct Offence from that of a forcible Entry, and no Way depending on it; and my Lord Chief Justice *Holt* seemed to be of this Opinion in *Leighton’s* Case above mentioned. However it seems to be certain, That if a Bill both for a forcible Entry and forcible Detainer be preferred to a Grand Jury, and found *Ignoramus* as to the Entry with Force, and *Billa vera* [Lat. the bill is true] as to the Detainer, it will not warrant an Award of Restitution, but is void, because a Grand Jury cannot find a Bill true for Part, and false for Part, as a Petit Jury may.”

¹⁸ Dalton 315: “And here note, That the being of a Mans Wife, Children or Servants in the House, or upon the Land, do preserve his Possession; but his Cattel being upon the Ground, &c. do not preserve his Possession.”

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Notes for *Lessee of Richard McWilliam v. Samuel Ruth & Thomas Moore*, [n.d.]

This case involved an action for ejectment to determine whether title to 110 acres of land had been conveyed to Richard McWilliam. Apparently at issue was whether the document of conveyance covered certain swampland. With the understanding that the defendants had not conveyed certain “upland,” the plaintiffs made various arguments that the conveyance of certain “marsh” conveyed the swampland. Arguing for the defendants, JD countered primarily by reviewing the use of the terms “swamp” and “marsh” in a number of prior documents relating to the land in question, including a survey, a patent, and a patent of confirmation, to show that the swampland should not be considered as “marsh” intended to be conveyed to McWilliam.

The property at issue in this case derived from a 1690 patent from William Penn to William Markham for 1,078 acres on the outskirts of New Castle County, Del. The entire property, called “Markham’s Hope,” was later confirmed by Penn to Jasper Yeates in 1701. After a variety of intermediate steps involving other owners, Jasper’s son George Yeates became the owner of 700 acres, which he conveyed to John Armor in a 1735 deed. After more intermediate owners, Samuel Ruth, father of the litigant, obtained 442 of the 700 acres. After Samuel died intestate in 1748, his son, George Ruth, received the property, some of which he transferred to his brother Samuel. In 1754 and 1755, those sons sold a total of 192 acres to Richard McWilliam, who owned other property in the area, likely also part of the original grant.¹

L[ess]ee of R[ichard] M. ^c William Esquire ²	}	Ejectment of 30 A[cre]s of Wood & 80 A[cre]s of Cripple ⁵
v Samuel Ruth ³ & Tho[mas] Moore ⁴		
Plaintiff’s Title		
Patent—		

{Old} Warr[an]t 3
Jan[ua]ry 1690 {1682}
Survey 25 Jan[ua]ry 1690
{1682}
Patent 10 Ap[ri]l 1690
Patent of Conf[ir]mati[on]
15 Oct[obe]r 1701—

John Stapler⁶ affirmd—
Thirty A[cre]s of Swamp
above Rogers's Run⁷
No Im[pro]vem[en]t made
at the Time of Survey—
Intention to gover[nor]
Oath
No Favour

Markham⁸ Gov[ernor]
He woud have it as much
in his Fav[or] as he
chose—

We dont claim the Upland—¹⁰ It was
ment[i]one[d] thro[ugh] the Mist[ake] of
[Pro]p[ri]etarys Off[ice]rs who thought it his
Duty to return all that he thought vacant
And tho[ugh] We might legally contend it,
yet We think it equitable, that the
Def[endan]t should have every Foot, to
wh[ic]h they have the slightest Pretence or
even Shadow of a Pretence

{# The Bound[arie]s natural— Must be &
are always observd}

Nor do We design to call upon
Def[endan]ts to shew their Title— Heaven
forbid— We grant their Conveyance from
the first Patentee to be unbroken—
Explain & insist on this

{#} Pl[ainti]ff holds the largest Share of
the Orig[ina]l Tract & therefore has the
greatest natural Right to Vacancy—

#No Matter whether
Survey a true platt or not
{as to Dist[ance]s}—but
true as to Div[isi]on
between Marsh &
Swamp— The most exact
I ever saw It was
Ignor[ance] of there being
Swamp
They mention it—

#Diff[erent] Shades
right

//////
Did they not understand
them in diff[erent] Senses?
{Use} both Words

On [Par]chment
Town laid down
Ships
compasses
Chard⁹
Bryan & Stapler's
Testim[ony]

1. The Survey. 2. Patent. 3. Words of
Survey— 4. Patent of Conf[ir]mati[on] all
make the Distinction between **Marsh &
Swamp**— {Why not ext[en]d to Creek—}
Rule of Law & Reason, th[at] if a Word is
usd in one Sense in an Instrum[en]t it shall
be used in the same throughout— Can it be
possible th[at] when the Word
Swamp {Marsh} is first used as diff[erent]
from Swamp, that afterwards it shoud be
used as mean[ing] Swamp?

Swamp & Marsh differ[en]t in their
Nature Quote Authorities to shew:
what Constr[ucti]on ought to be made Vin.
tit. Parolles—204. § 16— 17— 212—
213— ¹¹ {Besides}

"A Piece"— Obs[er]vati[on]— [If?]
compr[ehen]ds Swamp—sev[er]al {Pieces}
"Swamps belonging" &c in Patent of
Conf[ir]mati[on] cant mean Swamps out of
the Boundaries—

Those Words satisfied by the Swamps w[ith]in [page break] their Bounds—of wh[ich] there are sev[era]l— Remind Jury of this on View {small Branches runn[in]g up with Swamps on each Side}— These are the Swamps intended— What Need to go further?

Is not this the Com[mon] Expression in all Deeds— Were they ever thought to give Rights out of the Bounds— Appeal to Jury who are acquainted with Deeds—

“Swamps” is used there in Com[mon] with Trees Woods Hawkings Fowl[in]gs &c— Can it be supposed th[at] these Words were intended to grant Trees Woods Hawkings Fowlings &c out of the Bounds? in the{#} adjoin[in]g Lands? What greater Right to adjoining Swamps—when the Word “Swamps” is used in com[mon] with those other Words?

Swamp in Disp[ute]
separated by natural
Bound[aries] from Upland
& Marsh

##See Habend[um]
wh[ich] only is the
Upland—Great Marsh &
30 A[cre]s &c See also
3.^d {& [4th?]} Line of small
Parchment—{#} for
“**further assurance of the
Premises**”— No intent of
gr[an]t[in]g more—

Place Yourselves back
at the Time of Grant in
1682—

Where are they stop, if they go beyond their Bounds?— suppose 5000 A[cre]s adj[oin]in]g are they to take them?

But they are conv[enient]— Not so at the Grant—

The Marsh then was useful w[ith]out the Labour of clear[in]g— But the Swamp would even now cost 50 s[hillings] £3 or £4 {or so} [per] Acre to clear— How much less worth while then in 1682

Therefore Pat[ent]ee carefully avoids them but keeps the Marsh, because that servd for Pasturage w[ith]out any Im[pro]vement—& made it less necessary

to clear Woodland for Pasture in Winter
[page break]

Anothe[r] Arg[umen]t arises from the
Reserv[ati]on of Quitrent—only for Upland
& Marsh

#Same Res[tituti]on in
Patent of
Conf[ir]mat[i]on—

#which also recit[in]g a
former Title to One
R[ichard] Carr¹² for the
said Marsh yet not ~~the~~
~~least~~ {a} Line extend[in]g
over the Swamp—but
limited exactly as in first
Patent—

{Not one Act of [Pro][per]ty exercis'd
Not even [Repre[sen]t[ati]on?} of
belong[in]g to Pat[ent]ee or those claim[in]g
under him} Res[tituti]on of 2 Bushels for
Marsh no Objecti[on] tho[ugh] not 200
A[cre]s— It is plain from the Survey that
the Marsh was not surveyed—therefore
they might supp[ose] on the Guess they
made, for they cert[ain]ly did guess, to be
200 A[cre]s.— But if they knew it to be less
th[at]{an} 200 A[cre]s—yet the
Res[tituti]on [pro][por]tion'd to the Value
being so near {natural Past[ur]ing} this
Town— See Plan of old Survey [H?][C]older
than Philadelphia— Thought then that it
would ~~illegible~~ much— {Same [pro]portion
as the Rent reserv'd on the 39 Acres—}

Robert Bryan sworn—¹³ Runn[in]g the Courses from the Beg[in]nin]g
near little Marsh—found them vary after the 3.^d Course
{Obs[ervati]on—A Mistake says John S[taple]r}—but
fo[un]d the old Plan to be a pretty exact Repres[entati]on

of the present appear[ance] of the Upland as it makes down
into the Marsh & Swamp {& of the little Branches} {I
remember before any {[little] Spot—} part of Swamp
im[pro]vd till the Year 176[2?] ~~illegible~~}

John Stapler— An exact Repres[entati]on— And beg[in]nin]g
from the W[hite] O[ak] near Mill Dam,¹⁴ & lengthen[in]g
some of the first Lines—is very exact—& some of the

follow[in]g Lines very exact— Obs[ervati]on— What so
com[mon] in ant[ecedent] Surveys as the Lines being found
longer than the Dist[ance] ment[i]on'd [page break]

George Munro— Part of what is call'd Little Marsh¹⁵ in the old Plan,
was Cripple & Swamp.

Obs[ervati]on—This Plan is not describ[in]g the Little th[at] # was not to be granted— The Situation of the Place calld Little Marsh & not the Nature of it th[at] was intended— By Way of Explanation—
==

In some parts of what is called the L[ittle] Marsh the Plan has Marks of **Swamp ##** So in other parts of the Plan—

M^c[William]— Impossible to disting[uish] Marsh & Swamp Answ[er]— As easy as to disting[uish] Upland & Swamp— For Upland & Marsh {Swamp}—may run into one ano[the]r so that on the Edges it may be hardly possible to disting[uish] but does there[fore] all the Swamp adj[oinin]g pa[ss]?

=

{“Westermost main Branch of Swamp & Marsh—[”] [Answ[er]] Both Words usd here to describe the whole.}

What [Pro]f th[at] Great Marsh included Swamp— Words “Swamp” & “Great Marsh” only intended to disting[uish] wh[ic]h was Swamp & wh[ic]h was Marsh— Answer— Why not the Words “Great Marsh extended over the whole.[”] & then the Dist[incti]on of Sw[amp] & M[ars]h— So in all Maps— [Pro]vinces are laid down so th[at] the Name reaches over the Whole from one End to the other—then Subdiv[isi]ons in a smaller Char[acte]r

22 Oct[obe]r 1735— Deed from George Yeates¹⁶ to John Armor¹⁷ bind[in]g on the Creek— Answ[er]—above 50 Years after Survey— Can his own act give a Right? Q[ues]tion depends on Survey & Patent—
This D[ee]d conveys Marsh— It dont app[ea]r th[at] he kn[ew] whether there was Marsh on the Creek or not
No D[ee]d or Writ[in]g near the Time calls the Swamp Marsh— All the contract[in]g [Par]ties & Surv[eyo]r then dead [*page break*]

Why was the Swamp ment[i]one[d] if not intended to be gr[an]ted? Answ[er] Why was L[ittle] Marsh & Town of NewCastle laid down—? Were they to pass?

Undated

##

//////////

Swamp

Marsh

Night

==

Many Pieces of Swamps im[pro]vd by P[lainti]ff— Answ[er] Swamps w[ith]in the Bound[aries] expressly pass by the Pat[en]t—wh[ich] See

==

2 Mod. 233.¹⁸ Constr[ucti]on to be made to support a Deed— Answ[er] We support the Deed—but [*illegible*] is acknowl[edge]d th[at] the Intent[i]on is to guide Q[ues]tion only is, What is that Intention

==

Q[uæ]re— Case Yesterday ment[i]one[d] Answ[er] As Diff[eren]t as Day & Night

That Cause—Long poss[essi]on— Im[pro]vem[en]t Const[an]t [Repre[sen]t[ati]on?]—& “down by” in Survey “along the Creek”—in a cotemp[orary] Deed—& “down by the Creek in ano[the]r cotemp[orary] Deed—[”]

[Par][ticu]lar Circumst[ance] of Marr[yin]g our Father’s Widow in our Infancy—

Put our Title to the Rack—

AD (PHi-Logan)

¹ Deeds from Samuel Ruth to Richard McWilliam, Nov. 21, 1755, and George Ruth to McWilliam, May 21, 1754, Delaware Land Records, Roll No. 5, De-Ar. The 1682 warrant and survey do not appear in the recitation of history in deeds.

² Richard McWilliam (d. 1781), of New Castle, Del., served for a time as chief justice of the Supreme Court for the Three Lower Counties.

³ Probably Samuel Ruth, Sr. (1730–1792), a yeoman of New Castle Hundred, New Castle Co., Del.

⁴ Thomas Moore (died c. 1790) resided in New Castle Co.

⁵ Cripple: “A dense thicket in swampy or low-lying ground” (*OED*).

⁶ John Stapler (1721–1793) served several terms as a Burgess of Wilmington, Del. He was also a justice of the peace and deputy surveyor for New Castle Co.

⁷ Rogers Run was a stream.

⁸ William Markham (1635–1704) was appointed deputy governor of Pennsylvania by William Penn in 1681. He served in that capacity from 1681 to 1682 and as lieutenant governor from 1693 to 1699. For more, see *LLP*, 1:525.

⁹ That is, compass card, the circular rotating card on a compass showing the bearings.

¹⁰ Upland: “High ground, as opposed to meadow or marsh; ground not liable to flooding; a stretch of this” (*OED*).

¹¹ 16 Viner 204: “16. *Grammatical* Construction of a Word was *wav’d*, and the Word adjudged to signify in Law according to the common received Sense of the Word.... 17. For the Interpretation of Words there are *two Grounds*, 1st. If the *second Part contradicts the first*, the second Part shall be void. 2d. If the *second Part expounds the first*, both shall stand.”

16 Viner 212–13: “1. If a Man devises Land in D. to B. for Life, Remainder to C. &c. and after in the same Will devises his Land in S. and elsewhere to E. for Life, Remainder to F. in Tail, and after to the said C. In this Case the Words (elsewhere)

shall not extend to the Land in D. before devised, tho' he has not any other Land besides the Land in D. and S.... 2. A. seised of several Lands in Odiham, and likewise of the Manor of Stapely in Odiham, suffered a Recovery, and declared the Uses of it thus, viz. that the Recoveror should stand seised of *all his Lands in Odiham, to the use of himself and his Wife*, and after to other Uses; and as to the *Manor of Stapely in Odiham, to the Use of himself, and the Heirs of his Body*, and died; And the Court held, that the Wife should have nothing in the Manor of Stapely; For tho' by the first part of the Deed she is to have (all the Lands in Odiham), yet it being expressly shewn, that the (Manor of Stapely) shall be to other Uses, the Law shall expound it so as that every part of the Deed shall stand together if it may."

¹² Perhaps Richard Carr (born c. 1666) of Cecil Co., Md., who was the son of Capt. John Carr, Delaware deputy governor from 1668 to 1673.

¹³ Robert Bryan (d. 1764), of New Castle Co.

¹⁴ JD may be referring to the "white Oak on a point at the head of Mill Creek near the Beaver Dam" that serves as a reference point in the property description for the 700-acre tract sold by Yeates to John Armor (see n. 18, below), and later purchased by Samuel Ruth (d. 1748) from Samuel Land (Land to Ruth deed, March 21, 1747, Delaware Land Records, Roll No. 5, De-Ar).

¹⁵ According to a memo from George Read, "a survey made in 1688 by Ephraim Herman for Capt. Markham, of 1078 [acres] land called Markham's Hope," that land was "adjoining to the little marsh below the town of New Castle." See Scharf, 2:615.

¹⁶ George Yeates (1695–c. 1747), of New Castle Co., was a son of Jasper Yeates (died c. 1720). For this deed conveying some 700 acres of land and marsh, see Delaware Land Records, Roll No. 4, De-Ar.

¹⁷ John Armor, of New Castle Co., was a farmer.

¹⁸ 2 *Modern* 233, *Addison v. Sir John Otway*, Trin. 29 Car. 2, C.B. (1677): "In a special Verdict in *Ejectione firmæ*, the Case was thus, *Viz.* There was the Will of *Rippon*, and the Parish of the same Name; and likewise the Will of *Kirkby*, and the Parish of the same Name, in the County of *York*. And *Thomas Brathwaite* being Tenant in Tail of the Lands in question, lying in the said Parishes of *Rippon* and *Kirkby*; did by Bargain and Sale convey the same, lying (as in truth they did) in the Parishes of *Rippon* and *Kirkby*, to the intent to make a Tenant to the *Præcipe* in order to suffer a *Common Recovery*, and thereby he did Covenant to suffer the same, which Recovery was afterwards suffered of Lands in *Rippon* and *Kirkby*, but doth not say (as he ought) in the Parishes of *Rippon* and *Kirkby*; and the Verdict in effect found, That he had no Lands in the Wills; but farther, that it was the intent of the Parties, that the Lands in the Parishes should pass; and whether they should or not was the Question." The court ruled: "if this Recovery should not be construed to pass the Lands, the intention of the Parties would faile: 'tis true there is no Authority express in the point to guide this Judgment, nor is there any against it; but if such should be, the Opinion of the Court is not to be bound against apparent Right; and 'tis for the honour of the Law that Men should enjoy their Bargains according as they intended; for which Reasons, Judgment was given for the Defendant" (239).

Notes for *Uriah Blue & William McKnight v. William Clark, William McAllan, & Mary Forsythe*, [n.d.]

Colonial Pennsylvania had few laws regulating wills to supplement the common law. Two acts passed in 1682 required the testator to be “in his or her Right mind, and usuall Understanding,” and guaranteed that “all Wills in Writing attested by 2 Sufficient witnesses, Shall be of the Same force as to Lands as to other Conveyances.”¹ These laws were consolidated into one in 1693.² In 1700, the Assembly passed “An Act Confirming Devises of Lands and Validity of Nuncupative Wills,” which recognized the legality of oral wills, provided they were written down and subscribed by two witnesses within two days of the testator’s death.³ The Assembly revised and expanded the law in 1705 by passing “An Act Concerning the Probates of Written and Nuncupative Wills and Confirming Devises of Lands,” which placed further restrictions and regulations on oral wills.⁴ The stipulation that oral wills for estates worth more than thirty pounds had to be proved by two witnesses brought Pennsylvania more in line with the 1677 “Act for Prevention of Frauds and Perjuries.”⁵ To this legal structure, here JD provided guidance for how to draft and interpret wills.

This document consists of three parts that were preparation for the case, with JD arguing for the plaintiffs. Because the order in which JD wrote the notes is unclear, the following order has been imposed: The first part is a page fragment with what appears to be initial notes about a will. The second, based on the first and spanning three pages, is titled “General Rules in construing Wills.” It sets out the principles and addresses the specifics of the case, arguing that the intent of the testator was the guiding principle in construing the will, and that intent was to be determined from the words of the will itself. The third part, which was inserted within the leaves of the second, addresses the specifics of the case using some of the same language and evidence. JD argues that the application of those rules should lead a court to the conclusion that the testator intended to convey his estate to his son in fee-simple, rather than merely for the son’s life, after the death of the testator’s wife. Apparently, the problem JD confronted was that, although the will stated the provision for the wife, it did so for the son only in the preamble.

Blue ⁶ & McKnight ⁷ v Clark ⁸ & al[ia]	}	Notes—
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[page fragment]

“All the rest of my Goods Chattles & Lands I give to J.S. to discharge my Will—” this makes a Fee— Vin. tit. Devise 224. ib[idem] 225— (w[ith]out any Regard whether the [per]sonal Estate was suff[icien]t) Ch. Rep. 190. 202.⁹

==

£5 [per] Ann[um] to be paid to a Sister at &c the Lands of £16 a Year Value—a Fee— 2 Mod. 25. 26. 2 Lev. {or Leon.} 114. If there is a possibility of Dev[is]ees losing—it gives a Fee—¹⁰

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Where no [par][ticu]lar Est[ate] is limited, it shall be determ[in]ed by Test[at]or’s Intent— Vin. 20[4]{8}. 23.¹¹

==

11 Mod. 208—¹²

==

Intent of the Test[at]or—to be collected out of all parts of a Will— Vin. 182— His Mean[in]g to be spelt out by little Hints— 183—

Sent[ence] transpod to maintain the Intent— 182— So even Est[ate]s 184.¹³

Introd[uc]tory part of a Will to be reg[ard]ed where it will make a compleat Disp[ositi]on of the Estate— 184. 185. Barn. 14. 15. 3 P. Will. 295. 2 Str. 1020. Talb. Ca. 161. 284. 2 Vern. 690.¹⁴

==

The Constr[ucti]on of a Will must not depend on any thing out of it— 2 Bac. Ab. 309. & tit. Agreement— 5 Co. 68. a. 8 Co. 155. a. Keilw. 49. Eq[ui]ty sometimes considers them—¹⁵ [page break]

General Rules in construing Wills

Intent is the Pole Starr¹⁷

The Reason of fav[ourin]g the Heir at Law¹⁶ as We from a Circumst[ance] th[at] can have no Force here—the feudal Rights—

Construction is to be made from the Will itself Words transpod to agree with the Intent— Vin. 182

Even Est[ate] transpod to agree with the Intent— 184—

Intent to be collected out of the whole Will— 182.

Test[at]or’s Meaning to be spelt out by little Hints— 183.

Where no [par][ticu]lar Est[ate] is given—it shall be determ[in]ed by Test[at]or’s Intent— Vin. 208. 23.¹⁸

3 Reasons

1st— ~~to prevent Ch[asm]~~ The Preamble—
Barn. 14. 15. Talb. Ca. 161. 2 Str. 1020. 2 Vern.
690. Vin. 184. 185.¹⁹

1st 1st—Obj[ecti]on— Test[at]or breaks off &
does not express his Mean[in]g to dev[ise]
his whole Est[ate]—Answ[er]—
~~[illegible]~~{He} does plainly—for if the
Words have not that mean[in]g, they can
have none

common

2^d. Obj[ecti]on— The Word “**Estate**” not
ment[i]one[d] in the devis[in]g Clause— An-
swer— Not necessary The Chanc[ell]ors
& Judges speak of the Preamble as shew[in]g
his Intention— **Besides**—here the q[ues]tion
arises not merely on the Preamble as if the
Test[at]or had dev[ise]d to his Son Hugh
w[ith]out saying more—for here he adds the
Payment of money—wh[ich] Dev[ise] is
explained by the Preamble & the pay[in]g is not
the sole Argument, accord[in]g to the express
Words in Ca. Temp. Talb. 161.

~~2^{ly} Devisee is to pay—
2 Mod. 25. 2 Leon.
114. Vin. 224. 225. 11
Mod. 208.²⁰~~

In that Case the Word Estate was left out in
the Devise to Tho[mas] Dobson—²¹ Nay
test[at]or had applied it to an Estate for Life—
What is still more remarkable in the Case in
Talb the test[at]or made use in ano[the]r part
of his Will of the Words “Heirs”, wh[ich]
shews he knew of that form of Words & their
Force—yet the Dev[ise] to T[homas] D[obson]
adj[udge]d a Fee [*page break*]

Where a possibility of
losing—it gives a Fee
Obj[ecti]on— Hugh
could not be a Loser—
bec[ause] he would
have 2 shares—if his
Father died
Intest[ate] as to the
Rem[ainde]r

2^{ly} Here Devisee is to pay & maintain— Vin.
224. 225. 2 Mod. 25. 26. 2 Lev. or Leon. 114.
{11 Mod. 208.}²²

1st— Obj[ecti]on— Absurdity in say[in]g that
“pay[in]g & maint[ain]g” should give a
Fee simple—bec[ause] then it would give a
Fee to the Wife— Answ[er] No
Absurdity—bec[ause] an exp[ress] Est[ate]

Answ[er] He woud
only 2/6 instead of
2/3—How app[ea]rs it

for Life given to her—wh[ich] cannot af-
terw[ar]ds be enlargd by implication— Ca.
Temp. Talb. 158—& Cro El. 497²³ quoted

th[at] these 2/6 were
equal to the
Paym[en]t of the
Leg[acie]s is th[at] to
be taken for
gr[an]ted?

Supp[ose] he had
paid them as it was
his Duty to do—&
then died—
Test[at]or is always
[pre]sumd to intend a
Benefit—
Hugh woud gain
nothing if this not a
Fee—

by P[lainti]ffs—

2 Obj[ecti]on— Injustice th[at] Wife shoud pay
a 3.^d if She had only a 3.^d Answ[er] None
bec[ause] a Life reckond a 3.^d part of an
Est[ate]—so where Int[eres]t is to be kept
down—[Pur]chases are for no more than
20, 30, or 40 Years—wh[ich] one Life may
freq[uen]tly last—

but if unjust th[at] She should pay a 3.^d
is it not unjust th[at] Hugh shoud pay 2/3—

3.^d Obj[ecti]on— The [per]sonal Est[ate]
sufficien]t to pay— Answer It was not—
But if it was the Constr[ucti]on cannot de-
pend on this bec[ause] it is something out of
the Will—wh[ich] if allowed no Man coud
know what Jud[gmen]t to form on seeing a
Will—the Co[lone]l himself acknowl[edge]s
this in these very Words— 5 Co. 68. a.²⁴
No Rule of Law more fixd—or more neces-
sary to be fixd—what Confusion woud oth-
erwise arise? {Test[at]or thought his
[per]sonal Est[ate] not sufficien]t &
theref[ore] charges “his whole Estate”}
G[entle]man aware of this & therefore
makes a

4th— Obj[ecti]on— th[at] the paym[en]ts are to
be made out of the [Pro]fits— 2 Vern.
106— {Answ[er]} There to be paid out of
the [Pro]fits—here out of the Estate. {Vin.
tit. Dev[ise] 216. God. Orp Leg— 328—
“and none of them out of the [Pro]fits.”²⁵

2 Ab. Ca. in Eq. 311.²⁶ Answ[er] “as soon
as may be” & in 3 Years if it be possible.

Prec[edent] in Chanc[ery] 67.²⁷ Answ[er] only
chargd{:} with Sums of money—not to be
paid at a certain Time as here—charging

means the [Pro]fits—this the ~~constant~~ {usual} way of charging Estates at home— There the Test[at]or makes Use of the Words “Heirs” in ano[the]r part—but not in this part on wh[ic]h the Dispute arose [page break]

Freeman 497—²⁸ Answ[er] other Cases adj[udge]d on the same princ[iple] where the Circumst[ance] there ment[i]one[d] did not exist—theref[ore] not material—

[several blank lines]

³^{ly}— Such a Constr[ucti]on to be made as to prevent a Chasm— Barn. 14. 15. Ca. Temp. Talb. 161—²⁹

How unreasonable to supp[ose] when a man sets about mak[ing] his Will in extremis³⁰—when &c that he intends to make a [par]tial one—?

Terms of Law unknown to them—theref[ore] the Law has departed from its own Rules to support the Intent—in [per]petuum— sang[ui]n[i] suo—&c paying &c³¹

How many Est[ate]s {woud} lost by construing Est[ate]s for Life—{contrary to Intent} where the Intent is not carefully lookd for & stri[c]tly regarded?

{Obj[ecti]on—Com[mon] to begin will{s}—in this manner— Answ[er]— More common for Test[at]ors to mean a total Disp[ositi]on—}

I appeal to the Court wh[ic]h is most reasonable to construe the Intent to give a Fee than an Estate for Life— [page break]

M^r. Read³²

Sid. 191.

3 Mod. 45.

Vin. tit. Dev. 216. Dev[ise] to S. he pay[in]g so much a Year to L. adj[udge]d a Fee in S. bec[ause] L. might outlive S. & then there woud be no Est[ate] to pay the money

2 Show. 49.

God. Orp Leg. 328.

2 Vern. 690.³³ [page break]

Uriah Blew & W[illia]m M^cKnight

W[illia]m Clark
W[illia]m M^cAllan and
Mary Forsythe

} Replevin

} 2 Bac. Ab. 311.³⁴ The Intent is not to be guest at—it must be drawn from the Words

3 Reasons

- 1st— to prev[en]t a Chasm Barn. 14. 15.³⁵
- 2^{ly}— The Preamble ib[idem]— Talb. Ca. 161. 2 Str. 1020. 2 Vern. 690. Vin. 184. 185.³⁶
- 3^{ly}— Bec[ause] the Dev[is]ee is to pay— 2 Mod. 25. 2. Leon. 114. Vin. 224. 225. 11 Mod. 208.³⁷

It is evid[en]t th[at] the test[at]or did not think his [per]sonal Est[ate] suff[icien]t for the [Pur]poses he ment[ion]s because he says “**of all his Estate**”—tho[ugh] in Talb. 161. the Word Est[ate] was left out in the Dev[is]e to T[homas] D[obson] & he had usd it as an Est[ate] for Life before—& tho[ugh] in ano[the]r part of the Will he made use of the Words “**Heirs forever**” wh[ich] shewd th[at] he knew the mean[ing] of these Words—

It is evid[en]t test[at]or meant the Maint[enance] to come out of the real Est[ate] bec[ause] to be paid in thirds as the real Est[ate] was dev[is]ed

of the Will itself—[&] must be agreeable to the Rules of Law— The Pole Starr ==

Test[at]or dont say th[at] dev[is]es of{all} his Est[ate]—but breaks off
Answ[er]— Does not th[at] shew his Intent as much as if he said—**dispose &c**
==

The mention[in]g his Est[ate] is only in the Preamble & not in the devis[in]g Clause—
Answ[er]— The Chan[cell]ors & Judges speak of the Preamble as the material part— bec[ause] it shews his Intent

Besides—here the q[ues]tion arises not merely on the Preamble as, if the test[at]or had dev[is]ed to Hugh his Son only—but he goes further—& adds the paym[en]t of Money—wh[ich] Devise is explaid by the Preamble {Ca. Temp. Talb. 161.} Many Est[ate]s lost contrary to Test[at]or’s Intent by construing Dev[is]e for Life—where the Intent was a fee simple—this the Reason th[at] Test[at]or’s Words & even the Est[ate]s given have been transposd— Vin. 182. 184.
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1 Ab. Ca. in Eq. 182. 19. 207. Ca. 1. Hob. 65.³⁸

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Absurdity in say[in]g th[at] “paying & educating &c” shoud give a Fee simple— bec[ause] it woud give a Fee simple to the Mother— Answ[er]— No Abs[ur]dity bec[ause] an Express Est[ate] for Life given to her— Ca. Temp. Talb. 158 & many other Authorities— Cro El. 497—cited—³⁹
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2 Vern. 106.—⁴⁰ Answ[er] There to be paid out of [Pro]fits— Answ[er] Here out of the **Estate**
==

Undated

2 Ab. Ca. in Eq. 311.⁴¹ Answ[er]—{as soon as may be, &} in 3 Years if it be possible.

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Freeman's Rep. 479.⁴² Answ[er]—other Cases adj[udge]d where th[at] Fact ment[ione]d in Fr. does not appear [*page break*]

Hugh could not be a loser—bec[ause] he would have 2 shares— if the Test[at]or died intestate as to the Rem[ainde]r— Answ[er] He would only have 2/6 instead of 2/3—how app[ear]s it—th[at] the 2/6 were equal to the Paym[en]t of the Leg[atee]s— Supp[ose] he had p[ai]d them—**as it was his duty to do**—& had then died—

==

Prec[edent] in Chanc[ery] 67.⁴³ Answ[er]—only charg with Sums of Money—& not to be p[ai]d at a certain Time [*illegible*]{Tes}t[at]or makes a Distinction in the Words “Heirs &c”

Injustice of the Wiw{f}'s pay[in]g one third— Answ[er] A Life estim[ate]d always at home at one 3.^d of the Value of an Estate Lands only sell for 20, 30, 40 Years [Pur]chase wh[ic]h [*illegible*]{fr}eq[ue]ntly one Life lasts—

==

6 Co. 15. b.⁴⁴ The Intent to be clear— Answ[er] So it is here

Cro. El. 497.⁴⁵ Answ[er] The Lim[itati]on over (says the Book) shewd that he meant an Estate for Life

Cro C. 450. 157. The Intent to be clear— Answer ut supra⁴⁶

AD (PHi-Logan)

¹ 1 *SALP* 47.

² 1 *SALP* 163.

³ 2 *SALP* 48–49.

⁴ 2 *SALP* 194–98.

⁵ 29 Car. 2, c. 3 (1677): “An Act for Prevention of Frauds and Perjuries.” This act required three witnesses.

⁶ Uriah Blue (Blew), of Mill Creek Hundred, New Castle Co., Del.

⁷ William McKnight, of Wilmington, Del.

⁸ William Clark, of Wilmington.

⁹ 8 Viner 224: “13. *All the rest of my Goods, Chattles and Lands I give and bequeath to J.S. to discharge all Things in my Will, whom I make my whole and sole Executor, this gives a Fee. Ch. R. 190 12 Car. 2. Philips v. Hele.*” That reference in Viner JD cites above is 1 *Chancery Rep.* 190–91: “*All the rest of my Goods, Chattels and Lands I give and bequeath to Ralph Philips the younger, to discharge all Things charged in my Will, whom I make my whole and sole Executor.*”

1 *Chancery Rep.* 202–04, *Tibbotts v. Hurst*, 13 Car. 2, C.C. (1661–62): “That *Bar-nabas Hurst* Husband of the Defendant *Katherine Sen.* died indebted to the Plaintiff in 30 *l.* and to others, and intending to pay all his Debts in *Nov.* 1659, surrendered his Messuage called the *Woolsac*, to the Use of his Will, and the same Day made his Will, whereby he devised the said Messuage to the said *Katherine* his Wife, and gave to the Defendant *Katherine Jun.* his Daughter, 30 *l.* to be paid within a Year after the other Defendant *Katherine* her Mother’s Marriage, and 20 *l.* more at her Mother’s Death, and made the said *Katherine* his Wife his Executrix, and she to pay all Debts which he owed, and died, leaving *Katherine Jun.* his sole Daughter and Heir, and the Defendant *Katherine*, the Executrix, intending to preserve the said Messuage to herself for Life, and afterwards to *Katherine, Jun.* she pretends that she is not liable to pay her Testator’s Debts farther then she hath Assets of his personal Estate, and combining with the other Defendant *Katherine, Jun.* who claims the said Copyhold Premises by Descent, as Heir to her Father at least after her Mother’s Death; the Executrix doth refuse to sell the Premises, to pay the Testator’s Debts, insisting that she is not impowered by the Will in express Words.... This Court thereupon decreed the Defendant *Katherine* the Elder, shall sell for the best price the said Messuage for the Payment of the Plaintiff’s Debts.”

8 Viner 225: “19. Devise to A. of *all his Land* which he purchased of J.S. and to B. *the Lands* purchased of J.N. (being 20 *l.* per Ann.) *on Condition that B. shall allow C. Meat, Drink, Apparel and convenient Lodging during his Life.* A has only Estate for Life; B. has Fee.”

¹⁰ 2 *Modern* 25, 26, *Reed v. Hatton*, Pasch. 27 Car. 2, C.B. (1675): “In a special Verdict in Ejectment the Question did arise upon the construction of the Words in a Will; The Case being this: *John Thatcher* was seised in Fee of the Houses in question, and did devise them to his Son *Robert*; in which Will there was this Clause, *viz. Which Houses I give to my Son Robert upon this Condition, that he pay unto his two Sisters five pounds a year....* The Testator dies; the Houses are worth 16 *l.* per annum; and whether *Robert* the Son shall have an Estate for Life only or in Fee, was the Question.... Judgment was given for the Defendant. For if there be a Devise to one upon Condition to pay a Sum of Money, if there be a possibility of a loss, though not very probable that the Devisee may be damnified, it shall be construed a Fee, and such Construction hath been always allowed in Wills.... [T]he Estate in this Case being limited to *Robert*, and charged with payments to the Sisters during their Lives, doth plainly prove the intent of the Testator, was that the Devisee should have an Estate in Fee simple.”

2 Leonard 114, *Wellock v. Hammons*, Trin. 31 Edw. 1, B.R. (1589): “And it was holden by the Justices, That where a man deviseth lands to his younger son, paying such a summe unto such, the Devisee hath a Fee-simple; and if he do not pay the moneys accordingly, his Estate shall determine, by the same Limitation, and shall go to the heir without any other limitation, and the quantity of the moneys, be it great or small, is not materiall.” The reference to 2 Levinz 114, *Bernardiston v. Some*, Trin. 26 Car. 2, B.R. (1674) was possibly made in error.

¹¹ 8 Viner 208: “23. When *no Estate is limited*, the Devise shall have an Estate according to the Intent of the Devisor, which *Intent shall be expounded by the Words in the Will*; if not that it be in Special Cases.”

8 Viner 223: “5. A. seised in Fee, has three Sons, B. C. and D. and devised to B. and C. and D. severally, certain Parcels of Land, without mentioning of any Estate which they should have, and this was in Reversion after the Death of the Wife, and paying 10 *l.* a-piece to the Daughters, and that *if any of the Sons should marry and have Issue Male of their Bodies and die before his Entry into the Land then his Issue shall have his Part*; after which D. takes Wife, and had Issue Male in the Life of the Wife of the Devisor. The Wife of the Devisor dies, D. enters into his Part, and *pays his Portion*

of 10 l. a-piece to the Daughters and dies, but he not dying before Entry, had but Estate for Life, according to the express Words of the Will; for Marriage, having Issue Male, and Death before Entry, are three Things precedent to the Tail, and the Words. 'Paying 10 l. a-piece to the Daughters,' makes not a Fee Simple, but is intended for the same Estate as is devised."

¹² 11 *Modern* 208, *Reeves v. Gower*, Hill. 7 & 8 Ann., B.R. (1709): "In a special Verdict the Case was found thus: *A.* by his Will devises Lands to *B.* and then bequeaths Legacies; and after two or three Legacies to different persons, he gives 5 l. to *C.* and directs *B.* to pay it, but gives him two Years Time to pay it. The Jury find the Lands to be 50 s. *per Annum*; and the Question was, what Estate *B.* had, whether for Life or in Fee? And adjudged to be a Fee. For that the Devise here was a Sum in Gross, and a *Debitu' in præsentì solvend' in futuro* [Lat. a debt due at present, to be paid in future]; and it was a Sum certain to be paid by *B.* at all Adventures, whether the Land yielded full 5 l. or not; and so not like the Cases, where the Sum devised is to arise out of the Profits, &c."

¹³ 8 Viner 182: "11. A Will ought to receive Construction by a due Consideration of the *Intention of the Testator collected out of all the Parts thereof*, so that there be no Repugnancy, but a Concordancy in all Parts thereof."

8 Viner 183: "24. The *Meaning* of a Testator is to be *spelled out by little Hints.*"

8 Viner 182: "12. *Sentences transposed to preserve the meaning of a Will.*"

8 Viner 184: "30. *Estates transposed to maintain the Intent of a Will.*"

¹⁴ 8 Viner 184: "34. *The same Word in the same Will is of the same Sense.*"

8 Viner 185: "44. Where a particular Estate is *expressly* devised, a contrary Intent is not to be *imply'd* by Subsequent Words."

Barnardiston 14–15, *Tuffnell v. Page*, Pasch. (1740): "[T]he introductory Clause in the present Case is decisive to shew the Testator's Intention to dispose of his whole Interest in the Land; the Words are, 'What Estate I have I intend to settle in this Manner.' This shews that he intended to dispose of his whole Interest in the Premises; and it is as strong as if the Testator had said, All my Estate I dispose of in this Manner; and the Case is stronger, because of the word *settle*; by this Expression the Testator shews his Intent to make a Settlement of his whole Estate; and the Will does all that."

3 Peere Williams 297, *Tanner v. Wise*, Trin. 7 & 8 Geo. 2, C.C. (1734): "For that though it had been objected, that the Words *temporal Estate* did more properly refer to Personal Estate, and especially to Leases for Years, (which, comparatively speaking, are but of short Continuance) and not to an Estate of Inheritance, which is permanent, and may last for ever; yet here this Expression seemed to have been made use of in the Will in Contradistinction only to the Testator's *eternal Concerns*, which every Man, at the Time of making his Will, is naturally supposed to have in View; so that the Words *temporal Estate* signify the same as *worldly Estate*, or all that a Man has in the World, and consequently take in both Real and Personal Estate."

2 Strange 1020, *Maundy v. Maundy*, Trin. 8 & 9 Geo. 2, B.R. (1735). Maundy's eldest son challenged his father's will, arguing it effectively disinherited him, but the court ruled against him.

Talbot 161, *Ibbetson v. Beckwith*, Mich. 9 Geo. 2, C.C. (1735). The case concerned a dispute over Thomas Beckwith's will and its provision to give his entire estate at Northwith to his mother and upon her death to his nephew, Thomas Dodson, "if he will but change his Name to *Beckwith*" (157). Lord Chancellor Talbot argued that the words of the will proved that Beckwith "had his whole Estate in his View" when he wrote the will: "It hath been said indeed, That in those Clauses the Fee doth not pass from the Force of the Words, but from the Nature of the Purposes, viz. That of paying Debts, &c." (160–61).

For *Talbot* 284, *Tanner v. Morse*, Trin. 7 & 8 Geo. 2, C.C. (1734), see doc. 2:91, n. 5, above.

2 Vernon 690, *Beachcroft v. Beachcroft*, Trin. 1 Geo. 1, C.C. (1715): “The Question was, Whether a Moiety of the real Estate after Debts paid, passed to the Wife, or only half of the personal Estate; and the Case of *Bowman* and *Milbank* was cited, where the Words were, *I give all to my Mother*, and adjudged, that only the personal Estate passed.”

¹⁵ 2 Bacon, *Abridgment* 309: “It seems to have been agreed as a General Rule, even before the Statute of Frauds and Perjuries, that no Parol Evidence could be admitted to controul what appeared on the Face of a Deed or Will, not only from the Danger of Perjury, but from a Presumption, that whatever the Parties at that Time had in Contemplation, was all reduced into Writing.”

1 Bacon, *Abridgment* 67–76 is an entry entitled “Agreements.”

8 Coke, *Reports* 154 b. – 155 a., “Edward Altham’s Case,” Mich. 8 Jac. 1 (1610): “It was resolved, that they refer as well to Actions, &c. and Demands, as to the special Words, for it wou’d be against Reason that they should refer to general Words, which are more remote, and not to the Words of Qualification which are immediate and next to them.”

Keilway 49: “Note that it was said by Frowike in a brief on detention, and agreed to by all the Court, that he to whom a feoffment is made, nothing is proven to pass from the feoffee except only that which makes up the selfsame feoffment.”

¹⁶ Heir-at-law: “the person who succeeds another by right of blood in the enjoyment of his property; in English law confined to one who has such a right in real property, and distinguished from executors or administrators” (*OED*).

¹⁷ Pole star: “A prominent star in the constellation Ursa Minor (α Ursae Minoris) which is close to the north celestial pole and may be used (in northern latitudes) to find the direction of north” (*OED*). This understanding of the testator’s intent was a truism of the common law, usually traced to Edward Coke.

¹⁸ For 8 Viner 208 and 223, see n. 11, above.

¹⁹ For 2 *Modern* 25, see n. 10, above.

²⁰ For 2 *Modern* 25 and 11 *Modern* 208, see nn. 10, 12, both above.

²¹ JD likely meant “Dodson,” from the case of *Ibbetson v. Beckwith*; see n. 14, above, and n. 23, below.

²² For 8 Viner 224, 225, see n. 9; for 2 *Modern* 25, 26, and 2 Leonard 114, see n. 10; and for 11 *Modern* 208, see n. 12, all above.

²³ *Talbot* 157–58, *Ibbetson v. Beckwith*, Mich. 9 Geo. 2, C.C. (1735): “That as this was his Intent, so had he used Words sufficient to carry the Whole; three Things only being necessary in Wills to make the Devise good, viz. The Person described who is to take, the Thing which is to be taken, and the Interest which the Party is to have in it.” See also n. 15, above.

1 Croke 497–98, *Bacon v. Hill*, Trin. 37 Edw. 1, B.R. (1595): “Trespas. Upon a Special Verdict, it was found, That one Jeffery Hill was seised of three Tenements, viz. Rawlings, Rivets, and Downings, and had issue three Sons, viz. John, Richard, and Robert; and by his Will in writing devised all those Tenements to his Wife for her life; and after her decease, that his Tenement called Rawlings should be to John his Son; and his Tenement called Rivets should be to Richard his Son; and his Tenements called Downings (being the Land in Question) to Robert his Son. And further devised, That if one, or two of his Sons died; that then his part or parts should remain to the Survivors. And further devised (having three Daughters) to every of them 10 l. to be paid out of his Land by every of his Sons, as soon as they shall enter their parts, after the death of their Mother, as aforesaid. And in the end of the Will puts in this Clause: Provided always, if it fortune any of my said Sons to marry, and have Issue, and to die, before he enters his Part: then I will, that his Part shall remain to his Heir of his Body.” The plaintiff in this case was the son-in-law of John, Hill’s eldest son. The defendant was Robert’s son. Robert was dead, and the question was whether

his son “shall have this Land, as Heir in Tail, or Heir in Fee-simple.... And all the Court resolved, that *Robert* should not have a Fee-simple; for although it is devised, that every one should pay a Consideration, viz. 10 l. yet it being further limited, that after the death of every of them it should remain over; that shews his intent, that he should have it for his Life only” (498).

²⁴ 5 Coke, *Reports* 68 a. – b., “Lord Cheyney’s Case,” Mich. 33 & 34 Edw. 1 (1591). Sir Thomas Cheyney left “divers Manors” to his son, Henry, and Henry’s male heirs, with the remainder of the estate going to Thomas Cheyney “of Woodley” and his male heirs, “on Condition that he or they, or any of them shall not alien, discontinue, &c. And it was a Question in the Court of Wards, between Sir *Thomas Perot* Heir general to the Lord Warden, and divers of the Purchasers of Sir *Tho. Cheyney*, if the said Sir *Tho.* should be received to prove by Witnesses, that it was the Intent and Meaning of the Devisor to include his Son and Heir within these Words of the Condition (*he or they*) and not only restrain *Thomas Cheyney*.” The court ruled that he should not be received because “the Constructions of Wills ought to be collected from the Words of the Will in Writing, and not by any Averment out of it; for it would be full of great Inconvenience, that none should know by the written Words of a Will, what Construction to make, or Advice to give” (68 b.).

²⁵ 2 Vernon 106, *Hawker v. Buckland*, Trin. (1689): “The Question was, whether a Fee-simple passed by the Words of the Will, and the Case of *Collier* was cited, where it was adjudged, that a Devise paying out of Profits, or out of Lands in general, is no Fee-simple.”

8 Viner 216: “9. Devise of Land to his Wife for Life, she paying out of the Rents &c. Yearly to S. during his Life, and if my Wife die during the Life of S. I likewise then devise all my said Lands to S. he paying Yearly 3 l. out of the said Lands to T. during his Life, and likewise 20 s. to L. during his Life.”

Here, JD cites John Godolphin, *The Orphan’s Legacy: or, a Testamentary Abridgment*, 4th ed. (London: R. and E. Atkins, 1701), 328, from Part III, “Of Legacies and Devises,” c. 9, “Certain Cases touching Devises of Land in Fee-Simple”: “S. seised of Land in Fee, holden in Socage and devisable in *Gavelkind*, devised it to his *Feme* for her life, paying 3 l. per annum to T. his Son, during his life; and that he should take but two Load of Wood for Fire-boot: And if she died before the said T. then he devised all his Lands to R. his Son, paying to the said T. 3 l. per annum, and paying to such one of his Sisters 20 s. and to another Sister 20 s. The *Feme* dies, R. enters. The Question was, What Estate R. had by this Devise? And it was adjudged, he had a Fee: For when he devised it to his *Feme* for life expressly, &c. and to R. generally, without limiting the Estate, and appointing him to pay T. 3 l. per annum during his life, that carries in it an intendment that he should have a Fee, especially when his Father therein further willed, That his son R. should pay other Sums in gross, and none of them to be out of the profits, it is by intendment and by implication a Fee.”

²⁶ 2 Bacon, *Cases* 311: “15. I devise all my Lands in B. to my eldest Son; Item, I give to my second Son C. and (all) my Lands in D. Also to my Daughter A.R. I give 500 l. to be paid as soon as may be out of the aforesaid Estate and Premises, and within three Years, if it be possible.”

²⁷ Finch, *Precedents* 67, *Fairfax v. Heron*, Hill. 8 W. 3, C.C. (1696): “The Case was ordered to be stated by a Master, and was thus; *William Barker*, Esquire, being seised in Fee of divers Freehold Lands of 400 l. per Ann. the ninth of November 1684, makes his Will in Writing, duly attested by four Witnesses, and made his Nephew *Henry Fairfax* (his Heir at Law) Executor and Residuary Legatee, and thereby devised in these Words; *I give all my Freehold and Copyhold Lands which I have in Possession, Remainder and Reversion, (not hereafter disposed of) after the Death of my Executor, to William Fairfax his Son, and his Heirs for ever; but if he die leaving no Son or Sons my Executor shall think fit to give them to by his last Will;*

which Son or Sons so nominated (if William die as aforesaid) I declare shall have my Lands, charged notwithstanding with such Annuities, Legacies, and Payments, as hereafter specified.”

²⁸ Freeman 497, *Young v. Peirce*, Mich. 1 W. & M., B.R. (1689): “And although several Contests have been concerning Administration, yet there was never any appears but where there was a Pretence of an Equality, if not a Proximity of Kin; as in these Cases following Questions have been made; as, 1. Whether a Father or Mother were of Kin? which is not settled; as appears by *Bro. Administrat.* 47. 3 *Co. Ratcliff’s Case*. 2. Whether the Half Blood? 3. Whether the Wife? that is settled by the express Words of 21 *H. 8.* 5. 4. After that, whether the husband? that was settled in the Case of *Jones and Roe*, 1 *Cro.* 106. *Jones* 175. So curious have the Judges always been in construing and pursuing that Statute. It is said in the Books, amongst other Things, that by these Acts the Person is now determined, and the Judges ought strictly to pursue the Statutes, and that it is not at all left to Discretion.” It is likely, however, that JD meant to write Freeman 479 here; see n. 42, below.

²⁹ For Barnardiston 14–15 and *Talbot* 161, see n. 14, above.

³⁰ Lat. in an extremely difficult situation, i.e., at the point of death.

³¹ Lat. an estate for life.

³² Possibly George Read, who might have been opposing counsel.

³³ Siderfin 191, *Bowman v. Milbanke*, Trin. 13 Car. 2, B.R. (1661). The report, in LFr., reads: “On the special verdict found at Newcastle, by reason of passing across there, was the case that a grant from the Borough of English lands, distributable according to the Custom without written declaration, was granted in the will of the testator in their words, ‘I give all to my mother, All to my Mother.’ And further it was argued that this was an acceptable manner because a will that is good according to the Custom of not being written would be considered to be upheld and accepted just as a will made without being written, and that would therefore be like one whose will was made in writing.... But it was decided in the principle of the case by Twisden, and all of the Court, that lands should not pass by this manner, which was in this effect like the manner used to pass goods and chattel under Common Law. And because of this, it should not be taken to be the preferred manner in so much as this could be thought to disinherit an heir as the word [i.e., ‘All’] is ‘doubtful and uncertain....’ And according to this, the judgment was given to the Defendant who was a lessee of the heir.”

3 *Modern* 45, *Reeves v. Winnington*, Trin. 36 Car. 2, B.R. (1684): “The Testator was a *Citizen and a Freeman* of London, and being seised in Fee of a Mesuage, &c. and likewise possessed of a considerable personal Estate made his Will, in which there was this Clause, viz. *I hear that John Reeves is enquiring after my Death, but I am resolved to give him nothing but what his Father hath given him by Will. I give all my Estate to my Wife, &c.* The Question was, Whether by these words the Devisee had an Estate for Life or in Fee in the Mesuage? ... It plainly appears, that the Testator intended nothing for *John Reeves* therefore he can take nothing by this Will, and that the Devisee hath an Estate in Fee-simple, for the Words (*All my Estate*) are sufficient to pass the same” (46).

For 8 *Viner* 216, see n. 25, above.

2 *Shower* 49, *Lee v. Stephens & al’*, Pasch. 31 Car. 2, B.R. (1679): “*Ejectment*. Special Verdict. *A.* seized of the Lands in Question devises the same to *James* conditionally, That he shall allow unto my Son *Nicholas*, Meat, Drink, Apparel, Washing and Lodging during his Natural Life; and the sole Question was, If *James* took a Fee-simple by this Devise, or only an Estate for his own Life?” The court ruled that *James* had fee simple “for *Nicholas* hath no manner of Provision else, but only an Allowance of Meat and Drink; ’tis plain the Testator designed the Maintenance to be for *Nicholas’s* own Life, and not that when *James* should die.”

For Godolphin's *Orphan's Legacy*, 328, see n. 25, and for 2 Vernon 690, see n. 14, both above.

³⁴ 2 Bacon, *Abridgment* 311: "[B]y the Evidence of the Person who drew the Will, fully proved, that this was the Testator's Intention, which Evidence, it was urged, ought to be admitted, being only to rebut an Equity and oust of an Implication of Law arising from the Notions of the Courts of Equity, which revives the Debt in these Cases, and gives equal Benefit to both the Executors." See also 2 Rolle, *Abridgment* 757.

³⁵ For Barnardiston 14–15, see n. 14, above.

³⁶ For *Talbot* 161, see n. 14, above.

³⁷ For 2 *Modern* 25 and 2 Leonard 114, see n. 10; for 8 Viner 224–25, see n. 9; and 11 *Modern* 208, see n. 12, all above.

³⁸ 1 Bacon, *Cases* 182: "20. If a Man devises Lands to his three Daughters, equally to be divided between them, and if one of them die before the others, that then the others shall be her Heirs; these Words give them no Intail, but for Life only; because it is not to them and their Heirs, or Heirs of their Bodies; wherefore they have only an Estate for Life, with cross Remainders of each one's Part to the Survivors for Life."

1 Bacon, *Cases* 119: "7. If *A. Tenant in Tail of a Copyhold, Remainder to himself in Fee, purchases the Freehold of the Lord, and then sells to J.S. and dies; and after thirty Years Possession, the Son of A. sets up a Title as Issue in Tail, the Purchaser shall hold against him, the Freehold having attracted the other Estate, which was at Will.*"

1 Bacon, *Cases* 207: "5. As where a Man had Issue a Son and a Daughter, and devised that his Land should descend to his Son, and if he died without Issue of his Body, then the Land to go over, &c. The Son by this Devise took an Estate-tail, though Heir at Law to the Devisor, because here is an Estate-tail created by the Will, and the Heir must claim under the Will, or the Remainder will be void."

Hobart 65, *Greene v. Armsteed*, Trin. 12 Jac. 1, C.B. (1614): "In trespasse by *Robert Greene* against *William Armsteed* for lands in *Clay*, the case was thus, that *Ralph Greene* had issue *William*, and *William* had issue *Robert* the Plaintiff, and *Thomas* his younger sonne, and being seised of these lands in *Clay*, and of certain lands in *Stukey*, did make his Will concerning the same.... The onely question was, whether *Thomas*, under whom the Defendant claims, took a Fee-simple in the lands of *Clay*, or but for terme of his life ... and it was adjudged without difficulty that he took a fee-simple after the death of *William*."

³⁹ *Talbot* 158, *Ibbetson v. Beckwith*, Mich. 9 Geo. 2, C.C. (1735): "That the Objection of a precedent Estate being given (*viz.* to the Mother) by the word *Estate*, was idle: For, that as it was restrained to be but for Life; and the Word *Inheritance* been used instead of the Word *Estate*, with such a *Restriction*, it would have passed but an Estate for Life."

For 1 Croke 497, see n. 23, above.

⁴⁰ For 2 Vernon 106, see n. 25, above.

⁴¹ For 2 Bacon, *Abridgment* 311, see n. 34, and for 2 Bacon, *Cases* 311, see n. 26, both above.

⁴² Freeman 479–81, *Reake v. Lea*, Trin. 31 Car. 2, C.C. (1679): "*A. Being seised of 10 l. per annum Lands in Possession, and the Reversion of 34 l. per annum more expectant upon an Estate for Life, devises a Legacy of 20 l. to B. to be paid in twelve Months out of his Lands, and devises 50 l. to C. to be paid in two Years, and 50 l. to D. to be paid in the Space of two Years out of his Lands; and having two Sons, William his eldest and Richard the younger, devises all his Lands to Richard, who did not pay the Legacies within the Time. Two Questions, (1.) Whether Richard had an Estate for Life or in Fee, by the Devise.... (2.) Whether admitting it a Fee to Richard, it were not conditional, for many Words in a Will shall make a Condition, that in a Deed will not.*" The court agreed on point one, "that a Fee was devised, because it did appear that the Sum to be paid was more than the Profits of the Land would amount unto in that

Time,” and on point two that “it was a Trust, because that Construction would be most beneficial for the Legatees, and though the Law did construe some Words conditional in Wills that would not be so in Deeds, yet that was always with this Difference, when that Construction was most favourable to the Legatees.”

⁴³ For Finch, *Precedents* 67, see n. 27, above.

⁴⁴ 6 Coke, *Reports* 15 b., “Eden’s Case,” Mich. 36 & 37 Edw. 1, B.R. (1593): “NOTE, Mich. 31 & 32 Eliz. Rot. 365. In the King’s Bench in Trespass *Quare Clausum fregit apud Martham in Com’ Norf’* [Lat. wherefore he broke the close with Martha in Co. Norfolk], by *Thomas Eden*, and *William Franklyn*, against *Edward Brown*; the Defendant pleaded that the Queen was seised in Fee in Right of her Crown, and by her Letters Patent under the Great Seal, bearing Date at *Weldhall in Com’ Essex’*, &c. *concessit tenement’ præd’ in quibus*, &c. *cuidam A.B. &c.* [Lat. he gave up the estate and holding in which, etc., to a certain A.B., etc.] The Pl[aintiff] took Issue, *quod non concessit tenement’ præd’ per predictas literas patentes* [Lat. because he did not give up the estate and holding by the prearranged letters patent]. And this Issue was tried in the County of *Norfolk* where the Land lay, and not where the Letters Patent bore Date, and the Jury found for the Pl. and it was moved in Arrest of Judgment, That it ought to have been tried where the Letters Patent bore Date; & *non allocator per Curiam* [Lat. not addressed by the court]; for the Letters Patent being Matter of Record, and shewed to the Court under the Great Seal, cannot be denied, nor can the Party plead *Nul tiel record* [Lat. no such record], against them being shewed under the Great Seal, and therefore the Effect of the Issue of *Non concessit* [Lat. he did not grant] is, that the Queen had nothing in the Land, or that the Tenements did not pass by the Letters Patent, in which Cases it shall be tried where the Land lies; and so it was adjudged.”

⁴⁵ For 1 Croke 497, see n. 23, above.

⁴⁶ 3 Croke 450, *Wilkinson v. Merryland*, Trin. 10 Car. 1, B.R. (1634): “For the heir shall not be disinherited, nor the fée passed way without an apparent intent out of the words of the Will.”

3 Croke 157, *Ansley v. Chapman*, Mich. 3 Car. 1, B.R. (1627). It was argued for the defendant, “that for as much as there is not one word in the Will which speaks of any express intent, that he should have the fée, the Law will not adjudge it to be so, without an intent apparently to be collected out of the words in the Will” (158).

96

Notes for *Winter v. Erskine*, [n.d.]

In this case, probably in Pennsylvania, a disabled apprentice called Winter sued the estate of his deceased master, Erskine. The legal question was whether, after the death of the master of a crippled apprentice, the master’s executor was responsible for paying for the apprentice’s care. Here, JD argues for the apprentice on the basis that the relationship between master and servant is a trust or a covenant that cannot be dissolved by the death of either. The notes in the bottom half seeming to argue for Erskine’s side are likely preparation for the defendant’s response.

Undated

The Apprentice disch[arge]d by Law but to satisfy &c.

NB. This was in the Case too of an Apprentice put to Husbandry under the 5 of Elizabeth.¹

Admon[iti]on. Necessity for keep[ing] App[rentice]s in Subord[inati]on— The Abuse of the Sabbath the Beg[innin]g of Iniquities &c

Case of a Crippled Apprentice &c Sal. 66.² Per Eyre.³ Apprenticeship is a [per]sonal Trust between Master & Servant—

and determind by the death of either of them— By the death of either the Design or End of the Apprenticeship cannot be obtaind— And the Ex[ecu]tor may be of ano[the]r Trade. Cov[enan]t will lye ag[ains]t the Ex[ecu]tor—& then he may plead Want of Assetts—

[Per] Holt— By the Custom of London—the Ex[ecu]tor shall put the Apprentice to ano[the]r Master—

And in other Places—it woud be hard to construe the death of the Master a Discharge of the Cov[enan]ts

It has been held th[at] the Cov[enan]t for Instruction fails but he still continues an App[rentice] quoad⁴ Maintenance.

So in 12 Mod. 441. **Per Holt:** A master cannot assign over his Apprentice, as he may another Chattel; but it must be with his own Consent.⁵

== Winter v Erskine.

1 Sid. 175. 3 Bac. Ab. 566.⁶ A Master may correct [his] his Servant for abusive Lang[uage] Neglect of Duty &c

Once before Mr. Stamper⁷ who dischargd him & made his friends pay Costs

Ano[the]r time before M^r. Lawrence⁸ Who did the same— Groundless Comp[lain]ts

==

Erskine has paid Considerable Sums to Doctors at sev[era]l times

==

Never beat the Boy in his Life before but boxd him only once.

¹ 5 Eliz. 1, c. 4 (1562): “An Act Containing Divers Orders for Artificers, Labourers, Servants of Husbandry and Apprentices.”

² 1 Salkeld 66, *The King v. Peck*, Mich. 10 Will. 3, B.R. (1698), a case about a lower court’s order for an executor to keep an apprentice whose master had died before the time of the apprenticeship had expired, which JD summarizes here.

³ For Giles Eyre, see doc. 2:30, n. 68, above.

⁴ “To the extent of, as regards, with respect to” (*OED*).

⁵ 12 *Modern* 441, *Dominus Rex v. Margason*, Hill. 12 Will. 3, B.R. (1700).

⁶ Siderfin 175, *Bleeke v. Grove*, Hill. 14 & 15 Car. 2, B.R. (1663), an assault and battery case in which the master claimed his servant had neglected his duty

3 Bacon, *Abridgment* 566: “It is clearly agreed, that a Master may correct and punish his Servant in a reasonable Manner for abusive Language, neglect of Duty, &c. and that in an Action of Assault and Battery brought against him, he may justify, that he was his Servant, gave provoking Language, &c. and that therefore *moderate castigavit* [Lat. a plea in trespass to justify assault and battery].”

⁷ Possibly John Stamper (d. 1782), a Philadelphia merchant, who became an alderman in 1755 and later served as mayor. Under the city charter of 1701, aldermen were also justices of the peace and justices of the Court of Oyer and Terminer.

⁸ Possibly Thomas Lawrence (1720–1775), a Philadelphia merchant who began serving as alderman in 1755 and served two terms as mayor.

97

“Private Advantage to Yield to the Public Good,” [n.d.]

These notes relate to an application to a court by a group of “Country Men” to review a determination as to the rerouting of a road. Apparently representing the party challenging the rerouting, JD argued that although private advantage should yield to the public good, the decision as to the rerouting was reviewable by the court. JD’s position was that the court could consider the review, and it might find that the claims of the contending parties could be reconciled.

Private Advant[age] to yield to the Public Good

<p>Answer— Th[r]o[ugh] M^eIntire’s Barr’s & Elders Fields & thro[ugh] Barr’s Meadows—</p>	<p>It ought where they are incompatible—but Men may <u>mistake</u>¹ in reconciling them The old Road not laid down— The public might be as effectually servd by only taking out the Crooks— Thro[ugh] Meadows— Back of M^eIntire’s House—</p>
---	---

What Inconven[ience] from a Review? None—
If this Return is right—it will stand the Test—

_____ The Co[ur]t will receive the Opinion of ano[the]r Sett of Men—

MK. Penning of the Petitions— Answ[er] Country Men not
Masters of Language—

= =

The Co[ur]t are to be bound by the Men's Return— Answ[er]
Then there ought never to be a Review—

A streight Road may not be the best—may be more [torn] [to
gullying?]

AD (PHi-RRL)

¹ Here, "mistake" is underlined four times. The line extends to the word "streight" on the following page.

98

To a Young Gentleman, [n.d.]

The young gentleman to whom this letter was intended was almost certainly a child JD knew when he was at the Middle Temple in London. The married woman with children whom JD visited most frequently while in London was Rebecca Covington Lloyd Anderson, whose children are identified in doc. 1:5, n. 12. James, born around 1744, would have been the right age to be considering law school when JD returned to America. There is no record that he attended the Inns of Court.

My Dear Sir,

~~I have lately understood from your affectionate Mother that You are now thinking about fixing on some Profession, for the Employment of your future Life.~~

~~Your affectionate Mother, My Dear Sir, told informd Me lately, that You intend in a little time to sit down to the Study of the Law; & [illegible] that your profession & doing Me the Justice of reckoning Me in the Number of [he]r friends, desird Me to give my Opinion~~

~~Tho[ugh] I have not {had the Pleasure of} corresponded {ing} with You, since I left England. Yet I have often had the Pleasure of hearing from You were well; & have always sincerely wishd You Health & Happiness.~~

Your affectionate Mother, who does Me the Justice to reckon Me in the number of her friends, has frequently acquainted Me with ~~the~~ ~~Accounts~~ {what} She has had {eard} from You. {By this means} I understand that You intend in a little time to sit down to the Study of the Law; & as ~~You are to pursue the s~~ ~~proceed~~ {I have so lately travell'd the} same Road, ~~in which~~ You will {are} now ~~proceed~~ {to go,}, M^{rs} [blank] desires my Opinion as to ~~m~~{the} Method of [pro]secuting your Design. I shall think Myself very happy if my {little} Experience can furnish ~~You with~~ any hints that may be of Service to You; & if You will permit Me to look on You as a Brother, I assure You I shall think & write with the same Affection & Freedom as if this was directed to Phil.

The common manner of Living in the ~~Temp~~ Inns of Court is liable to a ~~gre~~ many Objections. It is more expensive, more inconvenient & more dangerous than living in a family. ~~I mean the Danger of Young Gentlemen's Morals~~ ~~The Young Gentlemen enjoy so much Liberty~~ I mean more dangerous to the Morals of Young Gentlemen— And tho[ugh] I have not the least Apprehensions of Your Principles or Prudence, Yet your own Good Sense will inform You, that Excesses which appear horrid at first Sight, become tolerable ~~in time, in~~ {a little} & by Familiarity, & enchanting by Practize. ~~The finest Understanding & firmest Resolution cannot always secure Us ag[ain]t the Allurem[en]ts of Pleasure.~~ The Inconveniences & Additional Expençe are very obvious :{.}

I believe therefore You will find it much more agreable to live with Your Uncle;¹ & in Term time You may [~~illegible~~] {dine} in Commons. [*in left margin:*] {Society / Attorney / Motives / Belle L[ett]res / Notes / Attendance} This will lead You into an Acquaintance with Gentlemen engagd in the same Studies;{:} & ~~i~~{I}t will be well worth your while to make very intimate Connections with those You ~~find~~ {observe} to be most industrious; ~~for~~ You will find Conversation ~~expl~~ correct a thousand Errors that laborious Reading may blunder into. It would be still better, after You have read some time, if You could form a little Society of 8 or 10 persons to meet at each other's Apartm[en]ts once a week, & argue Points of Law that were proposd the week before. I belongd to such a sett in the Temple & am convinced that nothing would be of greater service to a Young Lawyer.²

Most of the Students ~~in~~ {at} the Inns of Court labour under one great Disadvantage. They begin their Studies without knowing any thing of Practize & think it sufficient to understand the difficult Cases in the Books ~~withou~~t while they remain ignorant of the Law that is

daily made use— A little Practize explains a great deal of Reading— & many Hours are often spent in discovering a point in one way, that might be known in a few minutes in the other— I dare say Your Uncle will therefore think it proper for You to attend 3 or 4 hours a day in some Attorney's Office who has a good deal of Business— If ever You practize the Law in America it will be of the greatest Service to You, to be perfectly versd in the Practize of Westminster Hall— This seems to me a matter of great Consequence [*in left margin:*] {Wish your Happiness / Drawn from my own Experience / Fond Mother's Eyes / Sow}. No doubt Youll attend the Courts very constantly—& take Notes of all the Argum[en]ts & Judgm[en]ts You hear— The rough Draught You make in Court—will be very imperfect—but if You immediately set down on returning home, while every Idea is fresh in your memory, You will be able to recollect the greatest part of what past. After some time You will be convincd that the best method is to read too, with Notes— I believe there never was a great man in England at the Barr, who read without Notes— Some men have made {a} figures in America not only without Notes, but without Knowledge, & without Sense. But I hope You will never be indebted to the Good nature or Ignorance of the World for your Reputation.

However agreeable the Conv[ersati]on of my Lord Coke & Plowden & the other Sages of the Law may be to You, it may be very [pro][per] sometimes to go into politer Company— A Lawyer shoud not only be learned—but shoud have an agreeable & elegant manner of communicating that Learning to others— A good Stile is therefore absolutely necessary {;} to ~~illegible words~~; & the best way of acquiring this, is by reading the best Authors. This will insensibly refine & polish his Taste in Composition—& when once the mind has arrivd at that Delicacy wh[ic]h is necessary for this [Pur]pose it will serve many other [Pur]poses—for the same {Sense &} Love of Beauty & [Pro][pri]riety will give a Grace to every thing a man does— He will build, plant, live, converse & even manage the most trivial things {matters} {about him} in such a manner, that ~~there~~ {he} will see {for}m a {n} {Intellectual} Resemblance between things in their own Natures opposite. This I suppose Paulus Emilius³ meant when he said “That the same Understand Knowledge wh[ic]h enabled him to draw up an Army {in the field of Battle,}, instructed him how to range his Guests at an Entertainment”:⁴ And in our own Country, We know that Pope livd with the same {charming} Ease & Elegance with wh[ic]h he wrote.

These chearfuller Writers will be a Relaxation from your severer Studies, & create an Agreeable Variety— It must not be pretended, but

the Law is a toilsome tedious Employment; & therefore this is a proper Consider[at]ion—when one is deliberating what [Pro]fession to chuse: But when the Choice is made, to continue complaining & loitering is unmanly & foolish. Labour is the Lott of Human Nature; & Providence is kind {& wise} enough by some temptation or ruse to engage Us in the service of one another— What Crowds are enlisted by Pride Ambition & the Love of Money— Some Passion perhaps is the Leader of Every man; but I think those must be infinitely the most happy, whose fatigues are softend by a conscious Benevolence of mind wishing & endeavouring to [pro]mote the Happiness of others as well as their own.

A Lawyer of Integrity & Humanity {for they do not always go together,} may be a very useful member of Society;{.} If he desires Wealth, Application will procure it— If he is fond of Fame, he has a noble field to contend in.

Tis true he cannot enjoy all that Liberty or rather Idleness, that men in some other Employments may—but he may acquire Wisdom enough not to regret it. He cannot so frequently attend the Ladies at the Teatable; but he has Pleasure of knowing he is providing for some ~~worthy~~ {amiable} Girl, whose Truth & Affection will well repay the generous Trouble he gives himself. But I forget I am writing to a Young Gentleman who does not begin yet to think of the Ladies[.]

Dft (PHi-Loudoun)

¹ Here, JD may have been referring to a brother or brother-in-law of Rebecca Covington Lloyd Anderson's husband, William Anderson. She had no brothers or brothers-in-law in England after 1758, when her half-brother James Hollyday returned to Maryland from studying at the Middle Temple.

² The specific members of JD's "little Society" are unknown, but among the other Americans at the Temple with whom he associated were John Blair (1732–1800) of Virginia, later a justice of the US Supreme Court; Charles Carroll (1723–1783) of Annapolis, Md., a delegate to the Continental Congress, 1776–77, and a member of the Maryland Senate; William Drayton (1732–1790), later US district judge for South Carolina; Thomson Mason (1733–1785) of Virginia, a judge and legislator who was the younger brother of George Mason (1725–1792); and William Hicks (1735–1772) of Philadelphia, whose bond to the Temple JD cosigned in June 1754 (see doc. 1:16).

³ Lucius Aemilius Paullus Macedonicus or Paulus Æmilius (c. 229–160 BC) was a consul in the Roman Republic and a general who conquered Macedon during the Third Macedonian War (171–168 BC), which ended the Antigonid dynasty.

⁴ "[Paulus Æmilius] used to say to those who wondered at his attention to details that the same spirit was required both in marshalling a line of battle and in presiding at a banquet well, the object being, in the one case, to cause most terror in the enemy, in the other, to give most pleasure to the company." Plut. *Aem.* 28.5.

APPENDIX A

John Dickinson's Terms and Activities in the Assemblies of the Lower Counties on Delaware and Pennsylvania

Data for this appendix was compiled from several sources. For the Lower Counties, Volume 1 of *Laws of the State of Delaware*, 4 vols. (New Castle and Wilmington, Del.: S. and J. Adams, M. Bradford and R. Porter, 1797–1816) provided the relevant information. Since there are few extant records for this period, all legislation passed during JD's terms has been included. For Pennsylvania, *Votes* (1762–64), 6 *SALP*, and *LLP* were the primary sources of information. Although this volume extends only through the end of 1763, because terms in the Assembly began in October, the entirety of that term has been included. Legislative documents after 1763 will appear in later volumes of *The Complete Writings and Selected Correspondence of John Dickinson*.

Representative, Kent Co., Three Lower Counties on Delaware

First Term, 1759–1760

Election date: Monday, Oct. 1, 1759

Legislation passed:

“An Act for the Better Relief of the Poor in the County of Kent” (1759)

“An Act for Keeping in Good Repair the Causey and Bridge Over Broadkill Creek in Sussex County, and for Regulating the Toll for Passing the Same” (1759)

“An Act for Reviving, Amending and Continuing, an Act of Assembly of this Government, Made in the Seventeenth Year of his Majesty's Reign, intituled, ‘An Act for the More Easy and Speedy Recovery of Small Debts’” (1759)

“An Act for the Better Regulation of the King's Roads in Kent County” (1759)

“An Act for the Better Regulation of the Supreme Court within this Government” (April 28, 1760)

“An Act for Appointing an Agent, Residing in England, for this Government” ([April] 1760)

“An Act for Striking Four Thousand Pounds in Bills of Credit, and Giving the Same to the King's Use, and for the Providing a Fund for Sinking the Same” ([April] 1760)

April 29, 1760: prepared “Report of the Committee appointed to Settle the Campeign Accounts in the year 1759” (doc. 2:21)

Second Term, 1760–1761

Election date: Wednesday, Oct. 1, 1760 (doc. 2:24)

Oct. 20: Elected speaker of the House (doc. 2:25)

Legislation passed:

“A Further Supplement to the Act, Intituled, ‘An Act for the Better Regulation of Servants and Slaves within this Government,’” (October 1760)

“An Act for Repealing an Act of Assembly of this Government, Intituled, ‘An Act Impowering the Magistrates of New-Castle County to View and Direct the Removal of Obstructions to the Fishery of Brandywine’” (October 1760)

“A Supplement to an Act, Intituled, ‘An Act to Encourage the Building of Good Mills within this Government’” (1760)

“A Supplement to an Act, Intituled, ‘An Act for the Better Regulation of the King’s Roads in Kent County’” (1760)

Representative, Philadelphia Co., Pennsylvania

First Term, 1762

Special election to fill a vacancy: Tuesday, May 11 (doc. 2:43)

The Assembly went into adjournment on Friday, May 14; JD did not take his seat until the Fifth Session on Sept. 7

Second Term, 1762–1763

Election date: Friday, Oct. 1, 1762; JD took his seat on Jan. 11, 1763 (doc. 2:55)

Jan. 12, 1763: Appointed to a committee to prepare a “Bill for the Payment of such Masters within this Province as have lost Apprentices by Enlistments” in the king’s service (doc. 2:65)

Jan. 21: Appointed to three committees:

For continuing and amending the act entitled, “An Act to Regulate Waggoners, Carters, Draymen and Porters within the City of Philadelphia” (2:66)

To prepare bills for regulating the courts of judicature within the province and for limiting the continuance of actions in those courts (Lt. Gov. James Hamilton refused assent)

To consider the various acts for poor relief and condense them into one (no resulting bill)

Jan. 28: Appointed to two committee to prepare bills, which resulted in:

A supplement to the act entitled, “An Act for Regulating, Pitching, Paving and Cleansing the Highways, Streets, Lanes and Alleys of the City of Philadelphia” (doc. 2:67)

Appendix

- Feb. 3: Appointed to a committee to enquire into the state of the dock between Chestnut and Walnut Streets and suitable places for public landings. The committee reported on Feb. 9 that the dock needed maintenance, they could not determine an owner, and there were other convenient and affordable docking locations up and down the River Delaware.
- July 6: Appointed to a committee to prepare “An Act for Regulating the Officers and Soldiers in the Pay of this Province” (doc. 2:74)
- July 8: Charged with observing that the Great Seal was affixed to bills and returned to the Rolls Office
- Sept. 17: Appointed to a committee to prepare “An Act for the Erecting a Light-House at the Mouth of the Bay of Delaware, At or Near Cape-Henlopen; for Placing and Fixing Buoys in the said Bay, and River Delaware; and for Appointing Commissioners to Receive, Collect and Recover Certain Sums of Money Heretofore Raised by Way of Lottery, and to Appropriate the Same to the Purposes Aforesaid” (doc. 2:81)
- Sept. 21: Appointed to a committee to prepare a bill granting the king £25,000 for bills of credit (Lt. Gov. James Hamilton refused assent)
- Sept. 22: Appointed to a committee to prepare “An Act to Continue an Act intituled ‘An Act for Regulating and Continuing the Nightly Watch, and Enlightening the Streets, Lanes and Alleys of the City of Philadelphia, and for Raising Money on the Inhabitants and Estates of the said City for Defraying the necessary Expence thereof’” (doc. 2:79)
- Sept. 23: Appointed to a committee to prepare “An Act to Enable the Commissioners for Paving the Streets of the City of Philadelphia to Settle the Accounts of the Managers, and to Sue for and Recover, from Several Persons, such Sums of Money as are Now due, and unpaid, on Account of the several Lotteries set up and drawn for paving the Streets of the said City” (doc. 2:80)

Third Term, 1763–1764

- Election date: Saturday, Oct. 1, 1763 (doc. 2:82)
- Oct. 15: Appointed to the committee of correspondence and a committee to revise and correct the minutes of the House before publication
- Oct. 18: Appointed to two committees to prepare bills:
“An Act for Granting to His Majesty the Sum of Twenty-Four Thousand Pounds, for the Defence and Protection of this Province, and for Other Purposes Therein Mentioned” (doc. 2:83)
“An Act to Prohibit the Selling of Guns, Gunpowder, or Other Warlike Stores, to the Indians” (doc. 2:84)
- Dec. 22: Appointed to committees to prepare replies to Gov. John Penn’s speech of the 20th and message of the 21st (docs. 2:85 and 2:86)
- Jan. 3, 1764: Appointed to wait on the governor and inform him of various legislative actions

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- Jan. 6: Appointed to a committee to prepare “An Act for the Payment of Ten Thousand Nine Hundred and Forty-Seven Pounds Sterling in Certain Proportions to Several Colonies in America”
- Jan. 9: Appointed to a committee to examine letters from Maj. Gen. Jeffery Amherst. The committee reported on the letters on March 3
- Jan. 19: Appointed to a committee to prepare an answer to Gov. John Penn’s message of the 16th
- Feb.: Edited a draft of “A Supplement to the Act, Intituled ‘An Act for Taking Lands in Execution or Payment of Debts’”
- Feb. 1: Appointed to a committee to prepare “A Supplement to the Act intituled ‘An Act for the Better Settling Intestates Estates,’ and for repealing one other Act of General Assembly of this Province, intituled ‘An Act for Amending the Laws Relating to the Partition and Distribution of Intestates Estates’”
- Feb. 2: Appointed to two committees: first, to prepare a bill for erecting a workhouse for the poor; and second, to condense the poor laws of the province into one general act
- Feb. 3: Appointed to a committee to prepare “An Act for Preventing Tumults and Riotous Assemblies, and for the more Speedy and Effectual Punishing the Rioters”
Assigned to see the Great Seal affixed to the above law and deposited in the Rolls Office
- March 20: Ordered to wait on Gov. John Penn and inform him of the Assembly’s difference of opinion on the meaning of the words in the stipulations from the king regarding the supply bill under consideration for £55,000. They were instructed to clarify whether the most valuable of the proprietors’ lands should be taxed at the same rate as the least valuable of the inhabitants’ land; and to state that settling this point should not delay the fulfillment of the king’s request
- May 14: Charged with waiting on speaker Isaac Norris and requesting his attendance in Assembly
- May 19: Ordered that the Committee of Aggrievances be also a Committee of Privileges and Elections; JD appointed to same
- May 24: Delivered his *Speech* against royal government
- May 28: Voted with Isaac Sanders and John Montgomery in favor of entering a protest in the minutes against the measure resolving to petition for a change of government; it failed 24 to 3
Appointed to a committee to prepare a bill for holding circuit courts in the various counties
- Sept. 17: Appointed to a committee to prepare a bill to extend the amount of time the Commissioners to the Indians had for removal and sale of goods and settlement of accounts, per an earlier act of Assembly

APPENDIX B

Errata: Volume One (1751–1758)

Front Matter

p. lxxiv, n. †: *delete* of subjects

p. lxxvii, at Raymond, *Special*: *for* Thomas Raymond *read* Robert Raymond

Main Text

p. 15, n. 13: *for* (c. 1700–1761) *read* (c. 1700–1760); *for* doc. 2:25 *read* doc. 2:29

p. 23, second line: *for* {A}bout *read* {A}bout

p. 34, n. 16: *for* PA 4:3493 *read* PA, 8th ser., 4:3493

p. 72, second paragraph, third line: *for* thot *read* tho[ugh]t

p. 84, second paragraph, fifth line: *for* notwithstanding *read* notwithstanding

p. 121, n. 2, next to last line: *for* Regualating *read* Regulating

p. 137, doc. 1:40 header: *for* 175 *read* 1756

p. 137, second paragraph, third line up: *for* extremely *read* extremely

p. 182, second paragraph, struck-through line: *for* ~~I am {the Conduct of} sure this~~ *read* ~~I am sure {the Conduct of} this~~

p. 237, bottom paragraph, second line: *for* ~~Mr~~ *read* ~~Mr~~.

p. 305, doc. 1:61 headnote, fourth line: *for* doc. 2:34 *read* doc. 2:28

p. 311, doc. 1:62, headnote, first paragraph, last line: *for* doc. 2:34 *read* doc 2:28

p. 345–61, running header: *for* 1758 *read* [1761]

p. 348, second paragraph, third line: *for* Every *read* Every[one]

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p. 373: Indices for **Court Cases** and **Legislation** can be found in the present volume, pp. 466–67 and pp. 472–73, respectively

p. 396: include *Gentleman's Magazine*, 339, 341, 349–50

p. 407: *delete* Lewis (Ludwig), Frederick (Friedrich), prince of Wales

p. 408: *under* London, England, AREAS, BUILDINGS, STREETS *delete* Drury Lane, 14

p. 410: *under* Middle Temple, Americans at: *for* Thomas Mason *read* Thompson Mason; *under* Peyton Randolph, include p. 36

p. 423: *for* Powell, John D. *read* Powell, John H.

p. 427: *under* roadways, *delete*: Drury Lane, 14

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Page numbers in roman type indicate primary documents and spans of entire documents, including editorial notes. Page numbers in *italic* type indicate headnotes and endnotes. When a page contains items in both the primary document and the editorial apparatus, the number is in roman type. Page numbers in **bold** type indicate person identifications. Information on legislation and court cases, including JD's, follow this portion of the index, and are cross-referenced in **bold**. The Appendix has not been included in the index.

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