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MISCELLANEOUS ESSAYS

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OF

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JUDGMENTS IN THE ADMIRALTY

O F

P E N N S Y L V A N I A.

[A. D. 1779.]

T U C K E R, Q U I T A M

versus

T H E S H I P P O L E.

THE ship Pole failed from Liverpool, in England, with a cargo of goods for the city of New York in America, then in the possession of the British troops, under a commission of letters of marque and reprisal against the subjects of the United States; and with orders from her owners to cruize against the Americans in her voyage,

VOL. III. A being

being properly armed for that purpose. After the delivery of her cargo at New York, she was to sail for Jamaica, take in a lading of rum and sugars, and then return to Liverpool,

SUCH was the plan of the voyage; subjected, however, to the discretion of an agent at New York, who had power to alter it if he should think proper.

AFTER the ship had delivered her cargo at New York, the agent ordered her to cruize on the American coast for four months, and shipped hands on board her for the purpose, as *privateer's-men*, which appeared by an endorsement on the ship's articles. She had also a let-pafs on board, signed by the senior naval officer at New York, stiling her a privateer.

UNDER these circumstances the *Pole* sailed from New York, and was captured by Tucker, in a frigate belonging to the United States, and libelled against in the admiralty of Pennsylvania as prize: whereupon a claim was filed in behalf of the United States for one half of the value, under an ordinance of congress, passed October 30th 1776, which gives the whole of vessels of war taken by the ships of the United States to the captors, but reserves

erves one half of merchantmen so taken, to the states.

THE only question was, whether the ship *Polc*, at the time of her being captured, should be considered as an armed merchantman, or a privateer belonging to the enemy.

VERDICT in favour of the captors for the whole.

T U C K E R, Q U I T A M

versus

THE SLOOP WILLIAM.

THE sloop William, captain Ashburner, was the property of John Wallace, an inhabitant of the island of St. Croix, and a subject of the king of Denmark. She took in a part of her lading at St. Croix, and cleared out at the custom-house there for the port of Philadelphia. From St.

'Croix she went to Tortola, a British island, where she took in the remainder of her cargo, which, by the testimony, appeared to have been sent after her in a droger from St. Croix. At Tortola, captain Ashburner, who was part owner of the cargo, cleared out at the custom-house there for New York, then in possession of the British troops.

WITH these double clearances, she arrived on the American coast, where captain Tucker discovered, pursued, and boarded her under British colours. Ashburner mistaking Tucker for a British officer, exhibited his Tortola papers, and alledged that he was bound for New York, whereupon Tucker took the sloop as prize, brought her to Philadelphia, and libelled against her in the admiralty as prize; at the same time a claim was filed in behalf of Wallace and Ashburner, the owners.

ON the trial, it was urged, in favour of the claimants, that this vessel and cargo were wholly Danish property, and that, notwithstanding the Tortola clearance, the sloop was in fact bound for Philadelphia, which clearance was only intended as a cover from British capture. In proof of this, many letters were exhibited, found on board, to sundry merchants of the United States. In particular, one to John Willcox of Philadelphia, containing

taining invoices of the cargo, and consigning the whole to him, informing him also that the vessel was covered with a British clearance.

It was further shewn, that from the course of the wind, and the direction in which she was sailing at the time she was discovered, the probability was, that she intended for the Delaware.

VERDICT for the claimants.

N. B. This was previous to the ordinance of congress making double papers condemnation.

BOYD AND CARTER

versus

THE SCHOONER JEMIMA.

THE schooner *Jemima*, belonging to Robert Bridges of Philadelphia, was taken by the British

as she lay aground in a creek near to Bordentown, in New Jersey, who stripped her, and then set her on fire. The libellants claimed salvage, for that they, at considerable risk (the enemy being in fight) went on board, extinguished the fire, and saved the vessel.

VERDICT, in favour of the libellants, for one-half of the value of the schooner.

H O U S T O N

versus

THE BRIG CHARMING NANCY,

THE brig charming Nancy, belonging to Purviance, and others, subjects of the United States, was on her voyage from Senepuxent to Philadelphia, when she was discovered near the Capes of Delaware by Houston, in a Philadelphia privateer, then out at sea. Houston hoisted British colours,

colours, and endeavoured to come up with her : whereupon, M'Kenzie, captain of the Charming Nancy, taking Houston for an enemy, endeavoured to run his vessel on shore ; but being unable to effect this in time, he, with the whole of his crew, took to their boat, and rowed to land, not leaving a soul on board the brig. M'Kenzie soon after discovered his mistake, went on board his vessel again with his mariners, and brought her up to Philadelphia. And now Houston libelled for salvage, as having found the vessel abandoned on the high seas, and saved her to her owners.

But as the abandonment was occasioned by the libellant's own act, the bill was dismissed.

VERDICT, that the brig be restored wholly to her owners.

H A L E S K A M P,

versus

THE SWIFT'S BOAT, AND THREE NEGROES.

THE *Swift*, a British sloop of war, chased the *Rattlesnake*, an American privateer, till, in the heat of the action and chase, both vessels ran ashore on the coast of Virginia, and stranded: the captain of the *Swift* then surrendered to the *Rattlesnake*. The negroes in question were taken on board the *Swift*. M'Cullough, commander of the *Rattlesnake*, took possession of his prize, and employed the negroes for some time in saving goods from both wrecks: but the negroes, watching a favourable opportunity, took the *Swift's* boat and went off, intending for New York. Haleskamp saw them from the shore, pursued, and took them, and now libelled against the boat and negroes as his prize.

AND it was urged, in behalf of the libellant, that the property, not having been condemned in
a court

a court of admiralty, vested with M'Cullough only as a possessory right, which ceased the moment an escape could be effected, and therefore the libellant ought to be considered as an original captor.

BUT the judge was of opinion, that M'Cullough had by the capture acquired a right, *sub judice*, which could not be injured by a fellow subject, and which a court of justice alone could confirm or invalidate: that if Haleskamp had libelled for salvage only, it had been good; but not as prize.

VERDICT—that the libel be dismissed.

Y O U N G,

versus

THE SLOOP HAERLEM.

SHAW, and others, of the city of New York, subjects of the United States, were owners of the privateer

privateer sloop *Harlequin* (now called the *Haerlem*.) In September 1776, the British then invading New York, this sloop was, by order of *General Washington*, stationed in *Haerlem* river to defend that pass, and prevent the enemy's boats from going up the river. On the retreat of *General Washington* with his troops, the owners not being able to get their vessel out to sea, on account of the enemy, had her scuttled and sunk in *Haerlem* river, where she was stationed, and then fled. The British troops took possession of New York, and afterwards, by order of admiral *Howe*, this vessel was raised, was called the *Haerlem*, and fitted out as a cruiser in the British service. After cruising three years against the Americans, and taking many prizes, she was at last captured by the libellants. Whereupon the former owners claimed her as their property; offering to pay one half of her value for salvage, as having been more than 96 hours in the enemy's possession, when she was re-captured: alledging, that their property had not entirely divested; because there was no proof that she had ever been condemned as prize in the British court of admiralty.

But although there was indeed no direct proof of such condemnation, yet the length of time she was

was

was in the service of the enemy, together with the general tendency of the testimony produced, gave a strong presumption that she had been so condemned, and therefore the jury found a

VERDICT in favour of the libellants.

G A M B L E

versus

THE SLOOP TERRIBLE.

*Claim, by John Osman, for five hogsheds of rum,
and a share of the prize.*

OSMAN was a prisoner in Jamaica, where also he had money due to him. With this money he purchased five hogsheds of rum. He was then, with other prisoners of war, put on board this sloop, which was British property, to be conveyed to New York, and was permitted to take his five
hogsheds

hogheads of rum along with him on his own account. The prisoners rose at sea upon the captain and crew, took possession of the sloop, and brought her into the port of Philadelphia. *Osman* was privy to the design, but unable to assist personally in the capture, being confined in bed by his wounds.

VERDICT, that the sloop be condemned as prize, and that *Osman* have his five hogheads of rum, together with a distributive share of the prize.

FALLIAGE, & ALI.

versus

THE SCHOONER H O P E.

Mollineaux, & ali. Claimants.

MOLLINEAUX, *and others*, Frenchmen, were owners of the schooner Hope, which was captured

captured by a British privateer in her voyage from Maryland to France. Falliage, and others, the former crew, but now prisoners on board, contrived to make the British prize-master and his companions very drunk, and to keep them so till the vessel was brought into the port of Philadelphia. And now the owners claim their vessel again, on paying salvage, agreeably to the marine laws of America.

BUT it was urged, that they, being French subjects, ought to be determined by the law of France, which gives the whole of re-captured vessels to the re-captor, when the prize has been more than twenty four hours in the possession of the enemy.

BUT the judge was of opinion, that as American owners were, in cases of recapture, allowed the benefit of the American law in the admiralty courts of France, French owners ought also to have the benefit of the American law in the ports of the United States.

VERDICT, that the schooner be restored to her former owners, they paying to the re-captors one-half of the value in lieu of salvage.

H A R R I D A N

versus

THE SLOOP OF WAR HOPE.

Joseph Blewer, et ali. Claimants.

AT the commencement of hostilities between Great Britain and America, the British seized several merchant vessels in the harbour of Boston; amongst which was the *Hope*, belonging to Blewer, and others, of Philadelphia. The British afterwards fitted her out as a sloop of war, and put her under royal commission; and she cruised against the vessels of the United States for four years, and was at last captured by the libellant.

THE claimants insisted, that this vessel had never been condemned as prize in a British court of admiralty; because, at the time she was seized at Boston, no letters of marque and reprisal had as yet

yet issued against the United States, nor had the British courts of admiralty been established in America for the condemnation of their vessels: and thereupon they claimed their vessel, on paying salvage according to the ordinance of congress of December 5th 1775.

VERDICT for the claimants, as to the vessel, her tackle, apparel, and furniture (except the guns and warlike stores which were condemned as prize) the said claimants paying one-half of the value to the libellant for salvage.

N. B. This verdict was contrary to the opinion of the judge.

R I C E

versus

T A Y L O R.

THE parties were commanders of privateers duly commissioned. Taylor engaged, and took a prize, Rice being in fight at the time of the capture. Whereupon Rice claimed a share of booty under the maritime law.

ON the trial it appeared, that although Rice was in fight at the time of the action, yet from the peculiarity of his situation, it was impossible he should have contributed to the capture by terrifying the enemy: and so the jury found a special verdict in these words.

“ THAT captain John Rice was in fight, and
 “ at the distance of five or six miles at the time of

“ the said capture, mentioned, and so forth ; but
 “ that he did not contribute to the said capture,
 “ or influence her surrender to the said captain
 “ Taylor. And if upon this finding, &c. &c.”

THE fact was, that Rice lay within a bar, close upon the shore of New Jersey, and saw Taylor engage a British vessel, about five or six miles out at sea. There were also two British vessels of force between Rice and Taylor, at the time of the action. Rice, observing the battle, saw at last one of the vessels strike to the other, but could not clearly discern which had the victory : believing that Taylor had surrendered, he reported in Jersey that poor Taylor was taken at last. But he found a few days afterwards, that Taylor had been successful, and brought his prize safe into port. Whereupon he claimed a share of the booty under the general law respecting vessels in sight of a capture.

IN the argument on the special verdict, the counsel for Rice rested his claim principally on Molloy, Book Ist chap. 2. sect. 20. urging that no testimony should be admitted against a presumption of law.

BUT the judge observed, that the presumption of law is founded on a material fact: to wit, that the vessel in fight be armed and *prepared for battle*, or at least in a possible condition to join in the battle. When this is the case, the law will presume that her presence terrified the enemy and influenced the surrender; and therefore, although she does not join in the engagement, allows her a share of the prize in proportion to her men and guns. But if a vessel in fight is aground on a shoal or bar, or is far to leeward, with disabled masts and rigging, or is so situated (as in the present case) that it is manifestly impossible for her to take any part in the battle, she cannot be considered as to be so *prepared for battle* as to bring her within the presumption of law.

“WHEN the reason of the law ceases, the law itself ought likewise to cease with it.” 1st Black. p. 61.

AND so Rice's claim was dismissed.

THERE was an appeal from this decision, but the appeal was not prosecuted.

G E D D E S

versus

THE GOLDEN ROSE.

THE *Golden Rose*, belonging to subjects of the States of Holland, failed from Hamburgh with a cargo consigned to Colloghan and Sons, merchants, in the island of Teneriff, an island belonging to the crown of Spain.

HOLLAND was at this time in a state neutrality, but Britain had declared war against Spain, and neither of these nations were in alliance with the United States of America.

THE *Golden Rose* was captured near the Island of Teneriff by a British privateer, and ordered for New York, then in possession of the British army, and on her way to New York she was re-

taken by the libellant and brought into the port of Philadelphia.

HASSENCLEVER filed a claim for the ship and cargo in behalf of the owners and merchants, subjects of the states of Holland, and

DON Juan de Miralles also filed a claim for the cargo only, in behalf of Colloghan and Sons, subjects of the king of Spain.

IT was argued for the libellant, that although the ship and cargo did originally belong to the subjects of neutral powers with respect to America, yet the property had totally divested by the British capture, the vessel having been more than than six weeks in their possession: that if any injury was done to the neutral owners, it was done by the British captain who first took her, and not by the libellant, who forced her from a declared enemy as he had a right to do: that the present case came within the resolve of congress of November, 1775, declaring that all vessels employed in transporting provisions, stores, and so forth, to the enemy in New York, should, if taken, be lawful prize. And lastly, that if this vessel should not be condemned as prize, it would be easy for subjects of neutral nations to supply the British at New York

York with all things necessary for carrying on the war against us by collusion.

ON the contrary, it was urged for the claimants, that this ship had committed no offence whatever; that her intended voyage was a lawful one, viz. from Hamburgh to Teneriff. And although the libellant took her in her way to New York, yet it was by compulsion that she was found in that course. that the British privateer had violated the laws of nations in taking her, and therefore she could not have been condemned in their courts of admiralty; inferring, that as she was not legal prize to the captors, the re-captors could have no better title: and that, supposing the cargo to be Spanish property, yet as it had not been condemned to the captors, the property had not been totally divested, but that the *jus postliminii* took place, agreeably to the ordinance of congress of December 5. 1775.

AFTER long argument, the judge instructed the jury, that as the facts were all acceded to in this cause, viz. That the ship was Dutch, and the cargo Spanish property, and that she had been taken and retaken, as set forth in the libel, the decision must depend upon points of law only, and therefore recommended their bringing in a special

verdict; adding, that he would not give his opinion on the law, without taking time to look into the authorities referred to, and reconsidering the arguments on both sides.

THE jury, after a long recess, brought in a *general* verdict, viz.

“ THE jury find for the first claimant as to the ship, and they award freight according to charter-party. And they find a chest of clothes, and a piece of linen to be the property of William Vanderwindt*. The said ship and goods to be restored without salvage.

“ THE jury find that the cargo, as set forth in three invoices exhibited in this cause, are the goods of John Colloghan and Sons, of the Island of Teneriff, the second claimants, they paying the said George Geddes for salvage, one moiety thereof.”

* The Captain of the Golden Rose when she was first captured.

D U C A T U R

versus

THE SCHONER DESIRE.

Argument on a special verdict.

THE question was whether French owners should have the benefit of the ordinance of congress relative to recaptures, and it was so determined. Vide p. Q. 13.

On March 8th 1780, the law of Pennsylvania, admitting juries to decide in admiralty causes was repealed, and a new admiralty law enacted, leaving the determination of such causes to the judge.

(1780.)

MONTGOMERY

vs.

WHARTON, AND OTHERS, OWNERS OF THE SHIP
GENERAL GREENE.

WHARTON, and others, owners of the ship General Greene, had chartered her to certain merchants for a particular voyage, and appointed Montgomery master for that voyage. The ship had cleared out at the naval office, and was on the point of sailing, when a sudden frost filled the Delaware with ice, and fixed her in the port of Philadelphia. During the winter some differen-

ces

ces arose between the owners and master. The consequence of which was that the owners, by a letter of dismissal, discharged Montgomery from their service, and put another master on board. Whereupon Montgomery libelled against the owners in the admiralty to compell them to fulfil their contract with him.

THE question was, whether owners could dismiss the master they had appointed before the completion of the voyage, after he had signed bills of lading for the cargo, and shipped his mariners, without the owners shewing sufficient cause for such dismissal.

AND it was contended, that the master, from the time of his appointment, has the sole command of the ship vested in him, and cannot be displaced without committing some offence sufficient to forfeit his rights and justify a dismissal. That after signing bills of lading, he becomes answerable to the freighters for the delivery of the cargo, and that the owners cannot by their act exonerate him from this charge, whilst the bills of lading signed with his hand, remain in the possession of the freighters: that the libellant, considering himself as engaged for this voyage, had neglected to seek for any other appointment; and that the

owners

owners discharging him at this time, was an injury which the court ought in justice to redress by compelling them to reinstate him in his office.

IN behalf of the respondents it was urged, that the owners of a ship have, and ought to have, a right to remove the master at pleasure; because their interests are so deeply concerned in the appointment, that they are answerable not only for his imprudent conduct, but are bound by contracts he may legally make on account of the concern: that if, after their choice of a master, his appointment should be deemed irrevocable for the voyage, unless some gross offence can be proved, the owners will be at the mercy of the master, who, by his weak or wicked conduct, may bring them to ruin. That if when the owners have dismissed the master, the court should undertake to reinstate him, contrary to their judgment and inclination, and so force him upon them, the court and not the owners, ought to be answerable to the freighters for any consequences that may ensue: that neither the charter-party, shipping articles, or bills of lading, prohibit a change of the master, as the contracts made with him are made in his official and not in his personal capacity: that the master is in fact the representative of the owners, and not himself personally bound,

bound, neither is he answerable for the conduct of his successor: that in case an action should be brought against him for a breach of contract on the bills of lading, he might plead his dismissal by the owners, and it would be good in law: that the subordinate officers are appointed by the master of a ship, and if they should misbehave, or prove insufficient or unsafe, the owners have no remedy but by the removal of the master: that if owners are bound by the appointment of a master to continue him for the voyage, the master ought also to be bound to perform the voyage, even against his interest or inclination; but if, in case of the master's refusal, the owners should libel against him in the admiralty, the court could give no redress, because the court cannot award damages, neither can it compel the master to a specific performance of his contract, from the nature of the service: that the master's appointment is, and ought to be during pleasure only: that the same power which appoints can remove: that if a master suffers injury by an unreasonable dismissal, he may have his remedy at common law, where ample recompence in damages will be made to him: and finally, that whatever inconveniences may arise to masters being subjected to the caprice of owners of

of vessels, much greater would arise to the owners, should they be compelled to retain in their service masters once appointed, however contrary to their judgment or interest; and that no instance can be produced of a master being thus forced upon the owners of a ship by any court whatever.

To which, council for the libellant replied— That this cause came properly before the court of admiralty: that where a court hath the right to take cognizance of an injury, it follows necessarily that it can give redress: that if the court cannot award damages, it can order a specific performance of the contract: that the court can compel the master to such performance; and if he refuses, can attach his person, and oblige him to give security for the completion of his contract; and, therefore, the jurisdiction is competent: that it would be unjust to send the master to common law for redress, on the owner's breach of contract, as the owners may fail and be unable to pay damages, and therefore the ship ought to be his certain and proper security: that all contracts ought to be sacred and mutual, being founded on reciprocity; and it would be absurd to alledge, that the master is bound on his part, and the owners not bound on theirs: that a master engaged for a voyage, is
like

like a servant indented for a certain time; and that the engagement or indenture cannot be dissolved, during the terms, but by mutual consent: that this vessel was chartered to the freighter, who acquired by the charter-party a temporary property in her, and the owners had nothing to do with her for the time, the ship being under the same circumstances with a house leased for a term: that after the charter-party is signed, and the goods laden on board, the owners cannot discharge the master at their pleasure; as his good character and abilities might have been the inducement which led the freighter to make choice of that ship in preference: and, lastly, that if no instance can be found of a master's being forced upon the owners of a ship, neither can any authority be produced, giving the owners the arbitrary power of dismissing the master at pleasure, and without assigning sufficient cause.

J U D G M E N T.

AFTER having carefully considered the arguments advanced, and the authorities cited in this cause, it appears to me unnecessary to pursue the whole tract of argument that hath been taken on this occasion. The decision of the cause rests solely on the nature of the contract between the owners

ners of a ship and the captain they employ. And the terms or substance of such a contract is, in my opinion this, viz. If the master well and faithfully performs the duties of his station, the owners, on on their part, are bound to pay the stipulated wages, and allow him all the customary privileges of his office. But it does not seem to be any part of the contract, that a master once engaged, shall be master for the voyage at all events. This might be extremely injurious to owners, on account of the very extensive powers a master hath over their property. And however hard it may appear that that the master should be subject to the caprice of his owners in this respect, he must consider it as one of the unavoidable inconveniences of his occupation, and in cases of real injury apply to the laws of his country for redress. Much greater would the danger be to owners of vessels, and indeed to commerce in general, if the appointment of a master should be irrevocable for the voyage. Whatever good opinion an owner may have of the master, at the time of his appointment, he may find sufficient reason afterwards to change his mind, and yet not be able to produce legal proof of his defection or inability. Fidelity or infidelity before a service performed, is a matter of opinion only, and it would be an unreasonable hardship to compel

pel an owner to continue what was originally a voluntary trust, in the hands of a person of whom he may have found subsequent reasons to believe that he may prove either unfaithful or unskilful, although he may not be able to charge him with any positive offence: but I cannot see how this court can interfere to any effect. If the court should decree that the owners shall receive the libellant on board, as master for the voyage contracted for; have not the owners a power to sell their ship, to lay her up, or totally change the voyage, and so evade the decree? Or, if a master should refuse to go the voyage for which he engaged, can this court compel a specific performance of the duties of his office? The remedy in both cases must be in damages for a breach of contract, to which the common law is most competent. Let the bill be dismissed.

THE libellant appealed from this judgment, and the cause was again fully argued before the judges of the high court of errors and appeals; but the libel was finally dismissed.

THE GOLDEN ROSE.

THE marshal of the court brought in an account against the ship *Golden Rose*, for fundry expenditures made, and services done for the said ship and her cargo; and prayed the judge to direct what parts of the said account should be charged to the ship, and what to the cargo.

THE judge, after hearing argument thereupon, directed,

First, That captain Vanderwindt pay for the pilotage of his ship into port; because this expence would have accrued to him, if he had arrived at the port of his destination.

Secondly, That he also pay all reasonable charges for wharfage and fastenings: because, by the terms of the charter-party, he is to bring his ship to a fit place for unloading, and because those expences are necessary to the safety of his ship.

Thirdly, That the cargo be charged with all reasonable

reasonable expences attending the unloading of the ship: because by the fifth article of the charter-party, it is covenanted, that the freighter shall cause the cargo to be brought on board, and at the place of discharge, taken from on board, free of charges.

Fourthly, That the expence of cutting the ship out of the ice be borne by the ship and cargo, in equal proportions, provided the cargo was on board when this service was done—otherwise, by the ship only: because this was equally necessary for the preservation of both.

Fifthly, That the marshal's bill for keeping watch on board, whilst the property was in his possession, as also the court charges, or costs of suit, be charged to the cargo: because the ship on the trial was fully acquitted.

Lastly, Wherever a charge is allotted in the above apportionment to be paid by the cargo, it is to be understood that the libellants are to pay one half thereof, and Colloghan and Sons, or their agents, the other half: because those charges are supposed to be deducted from the whole cargo before distribution made between the libellants and claimants, according to the decree.

D U C A T U R.

versus

THE BRIG NYMPH.

Claim by Thomas Irwin & al.

IT appeared in testimony that the Brig Nymph (formerly called the Neptune), had been the property of the claimants, and was captured by the British ship *Iris* on the 22nd or 23^d of April 1780: that on the 21st, and 22nd of the same month, three other vessels were also taken by the same ship, all which prizes were sent into New York: that on the 28th of the same month the captains of these four prizes were all taken before the judge of admiralty there, and examined, preparatory to the trial and condemnation of their vessels: that, about a fortnight after, one of the said four captains

tains was told by some of the officers of the Iris, and also by some of the crew, that they had received their shares of the four prizes aforesaid. It was also in proof, that the said four vessels had been advertised for sale at the coffee-house in New York ; and one of them, viz. the *Hetty*, was particularly remembered to have been advertised, as a *condemned prize* : that the *Neptune* had been purchased by merchants in New York ; and that on the 13th of May following she was commissioned as a privateer, by the name of the *Nymph*, to cruise against the vessels of the United States of America. Lastly, it appeared this brig sailed from New York on the 21st and was captured by the libellant on the 25th of May.

AGAINST the libel of the captors there was a claim filed, by Thomas Irwin and others, the former owners, founded on the ordinance of congress of the 5th of December 1775, upon a suggestion that this vessel could not have been condemned in the court of admiralty at New York previous to the re-capture : and in support of this suggestion, a British act of parliament was exhibited, wherein is set forth at large the mode in which the vessels captured from the United States of America shall be proceeded against in their courts of admiralty. Which act directs, that for the more

more speedy condemnation of such vessels, the whole process shall be completed in 28 days from the first application made to the judge by the captors; and the claimants alledged that this brig not only failed from New York, but was re-captured by the libellant before the 28 days were accomplished; and therefore inferred, that she could not have been condemned under this act: that all the evidence produced by the libellant to prove a condemnation was merely hearsay, and ought to have no weight, especially as there was no mention made of any such condemnation amongst the papers found on board, as is usual. And lastly, that her having been sold, commissioned, and sailing, and the money paid for purchasing her, being distributed amongst the first captors (if true) is still no proof, or even presumption, of her condemnation; because it is customary for the judge to permit prizes to be sold before trial, the parties giving security; and insisted, that before the property can totally divest, the condemnation must be directly proved, according to the ordinance of December 5th 1775.

WHEREUPON the judge observed,

THAT the manifest spirit of the ordinance of congress of December 5th is truly complied with
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when the property is fully and fairly divested : that the most direct and decisive way of ascertaining such divesture is by legal condemnation in the enemy's court of admiralty ; and therefore the ordinance makes that the criterion ; but that congress could not expect that full and direct proof of such condemnation could in all cases be produced, as the documents necessary to such proof cannot always be in power of the parties ; strong presumption must therefore often supply the place of absolute proof : that this brig having been captured, taken into the enemy's port, sold by order of the judge, commissioned under a new name, fitted out and sent by new owners on a cruize, must found a violent presumption that she had been legally condemned as lawful prize to the first captors : that whether she had been formally condemned or not, these circumstances were fully sufficient to a total divesture of the property from the former owners : that the act of parliament referred to, is professedly designed to shorten the process of the courts of admiralty, and directs that it shall be completed within 28 days ; but does not prohibit its being done in a shorter time : that as proofs have been given that some vessels have been condemned in a shorter time, it is possible, and even probable, that this brig might also have

been so condemned, and that such a presumption is justifiable by all the circumstances of the case.

J U D G M E N T.

THAT the brig be condemned as lawful prize to the libellants, and that the claim be dismissed.

K E M P

versus

THE SLOOP S A R A H.

Stiles, and others, claimants.

THE Sloop Sarah, being Bermudian property, sailed with a cargo of onions, sugar, salt, gin, flour and oil, from from Bermudas for Charlestown in South Carolina, the owners knowing at the time of her sailing that Charlestown was then in
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the possession of the British troops. The libellants discovered and captured her on Charlestown bar, at the entrance of the harbour, brought her into the port of Philadelphia, and libelled against her as prize.

WHEREUPON a claim was filed in behalf of Stiles, and others, the former owners.

AND it was urged in support of the claim, that by an ordinance of congress of the 24th of July 1776, the property of Bermudians was exempted from confiscation : that under the sanction of this ordinance the Bermudians had traded with the United States during the war, and frequently supplied their necessities at a very great hazard : and that Stiles the claimant in particular had been twice taken prisoner by the British for trading with the subjects of the United States : that the present cargo was not sent as supplies to the enemy : that the flour on board was too inconsiderable a quantity to answer any such purpose ; and that salt could be imported into Charlestown much more conveniently and cheaper from Turks Island than from Bermudas. That the truth is, this cargo was designed in part to discharge a debt due from the claimants to a certain Mr Loyd a known friend

friend to the American cause, and now a prisoner in Charlestown, and in part to purchase necessaries for the inhabitants of Bermudas : that the ordinance of congress prohibiting any vessels from carrying supplies, &c. to any part of the United States in the possession of the enemy, cannot be supposed to extend to vessels carrying provisions to relieve the wants of the subjects of those states who are prisoners and in distress, for that such an extension would be contrary to reason, humanity, and good policy. Testimony was also produced to prove, that there was really a debt due from the claimants to Mr Loyd at Charlestown ; and that the owners, or some of them, had declared before the vessel sailed from Bermudas, that part of the cargo was to discharge the debt due to Mr. Loyd, and the remainder to purchase provisions.

THE arguments being closed, the judge observed,

THAT the ordinance of congress in favour of the inhabitants of Bermudas, a people under the sovereignty and allegiance of Great Britain, could never be intended to put them on a better footing with respect to the war, than the citizens of America, or the citizens of neutral powers ; and that there could be but little doubt, but that an
Ame-

American vessel, taken in the situation of the brig Sarah, would have been confiscated: that the plea, that she was carrying supplies to a prisoner, ought to have been supported by full and direct testimony, to counteract the violent presumption to the contrary; but here was no direct testimony to that point, and even supposing the suggestion to be true, as to the good intentions of the claimants, they had not conducted the business according to the known rules of war; for leave should have been first obtained from the British commander at Charlestown, even for Bermudians to send in supplies to his prisoners. It is indeed in proof, that there is a debt due from the claimants to Mr. Loyd, a prisoner in Charlestown; and that one of the owners was heard to say, that part of this cargo was to discharge that debt, and the remainder to purchase provisions: but it nowhere appears, what was the amount of this debt, a very necessary circumstance, if all other objections were out of the way; otherwise, under cover of small and trifling debts due to prisoners, large and important supplies might be introduced to the enemy; and at any rate, the plea of paying a debt due could extend no further than the amount of that debt. But in opposition to these appearances of good intentions, it is in proof, that the owners originally designed this vessel and

cargo

cargo for the West India Islands, but changed the voyage as soon as it was known that Charlestown had surrendered to the enemy.

I adjudge that this vessel and cargo be condemned as prize to the libellants, and that the claim be dismissed.

W A L K E R

versus

T H E A L B I O N.

THIS ship was taken on her way from Liverpool to Archangel, having on board a cargo of salt and a hoghead of rum. The captors sent in with the prize, the ship's gunner, and three lads, prisoners; also two custom-house cockets, and an imperfect logbook or journal, said to be all the papers found

found on board at the time she was taken. One of these caskets respected the salt on board, and the other, the rum. The prize-master swore that there were no other papers found in the ship; and the gunner deposed, that the vessel was the property of *Ormsfon and Son*, merchants in Liverpool, but that the salt and rum were shipped by a consul from the court of Russia, at Liverpool, on account of the empress of Russia.

ON this appearance of the cargo's being neutral property, the judge directed the attorney general to file and prosecute a claim for the said cargo in behalf of the her majesty Russia.

THE cause being fully argued, the judge declared himself as follows :

IT is not essential to the present enquiry, whether it is probable or not, that there is at Liverpool such a character as a consul from the court of Russia, or what the rights and privileges of a consul are, by the law of nations; subjects which have perhaps been too largely discussed in the course of this argument. The only question seems to be, Is there sufficient proof or not that this cargo was shipped on account of her majesty of Russia, by her fac-
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tor or agent at Liverpool? or, in other words, Is the cargo neutral property or not?

THE testimony, by which this question is to be determined, stands thus : On the one side are the custom-house cockets of Liverpool, certifying the salt to have been shipped by Messrs. *Gilbert and company*, merchants, of Liverpool, and the rum to have been shipped by a Mr. *Roe*, of the same place. On the other side we have the deposition of the gunner of the ship, who belonged to her, as he says, at the time she was taking in her lading at Liverpool ; and expressly swears, that both the salt and rum were shipped by a Russian consul at Liverpool, on account of the empress ; and gives several collateral circumstances to support the truth of his allegation.

It has been suggested on the part of the claimant, that custom-house papers are often fallacious, and not conclusive evidence : that, for various mercantile reasons, borrowed names are often substituted for the names of the real shippers : that the deposition of the gunner is direct and absolute ; and that from the seeming mutilation of the log-book, and the papers forwarded being so few, there is reason to suspect a suppression of evidence on the part of the captors, in order to conceal
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from the court the real proprietor of this cargo ; and that this suspicion is further countenanced by the captors not sending forward the captain or mate of the prize, as by his instructions he ought to have done.

HAVING considered, as well these, as the arguments adduced in behalf of the libellants, I am of opinion, That the testimony of the gunner, founded on report only, concerning a matter in which he cannot be supposed to have any certain or accurate knowledge, however honestly or impartially given, ought not to outweigh the certified declaration of regular, official papers, unless some probable proof can be given, or circumstances adduced to shew, that these papers are, or may be, fallacious. There does not, in the present case, appear any reason, why a Russian factor or agent should make use of the names of Liverpool merchants to cover his neutral property, which would have been secure from confiscation without any such artifice : that a British merchant should, in the present war, strive to conceal his property under a neutral name is a very natural suggestion ; but common sense will not allow the supposition, that a neutral owner, already secure, would risk property under the borrowed names of persons, whose names alone would endanger confiscation in case

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of capture. The condition of the papers, and the not sending forward the captain or mate of the prize, induce a censure of negligence on the part of the captors ; but a wilful suppression of evidence for the evasion of justice, is a crime of so heinous a nature, that it ought not to be presumed of any one, unless very powerful circumstances shall justify the presumption.

I adjudge, that the ship Albion and her cargo, be condemned as lawful prize to the libellants.

F R E D E R I C K P H I L E

versus

T H E B R I G A C T I V E , A N D H E R C A R G O .

TH**E** brig *Active* was seized by *Frederick Phile*, the naval officer of Pennsylvania, going out of the port of Philadelphia, with a cargo of flour in violation of an embargo law of the state.

J U D G .

J U D G M E N T.

THAT the vessel, and her cargo, consisting of 252 barrels of flour, be condemned; one-third part to the use of the state, one-third to the naval officer, and the remaining one-third part to the informer, according to the law.

J O B P R A Y, & A L I.

versus

T H E B R I G R E C O V E R Y.

Claim by Robert Morris, on behalf of the
 U N I T E D S T A T E S.

JO B Pray and Aaron Stockholm engaged and took as prize, the brig *Recovery*, a vessel belonging to the enemy; the schooner *Livingston*, a vessel belonging to Robert Morris, the claimant, being in sight at the time of the capture. Pray and Stockholm were duly commissioned by congress

gress to cruize as privateers against the enemy ; but Kelly, the master of the Livingston, had no such commission.

THE council for the claimant urged, that it was a principle of law—that *prizes taken by vessels not commissioned, inured to the sovereign power*, and exhibited a transfer from congress, of all their title to any share in this prize to Robert Morris ; empowering him to prosecute a claim, in the name of the United States, but for his own benefit. And the authorities cited in support of this doctrine, were *Carthow* 474, and *12th Modern* 134.

BUT neither of these authorities apply strictly to the present case. In the one, the prize was a wreck, stranded on the shore, and great part of the booty was taken on shore by the crews of vessels not commissioned : in the other, a vessel without a commission, took a prize, and carried her into a foreign port, where the captor sold her, and converted the money to his own use.

IN both cases, the booty was taken by persons not commissioned to take ; no vessels duly commissioned assisting in, or being present at the time of the capture. But in the present case, the prize was in fact taken by vessels regularly authorized

for the purpose, and the non-commissioned vessel only in fight at the time of the battle. In the cases cited, no persons were present or assisting to whom the booty could be legally adjudged. Here the libellants, the real captors, were duly commissioned to take, and empowered by their commissions, and the resolves of congress, to possess and enjoy the property so legally taken.

A vessel not commissioned must be considered as a mere merchantman; and according to *Lee*, 237, if a merchant vessel meets an enemy in the course of the voyage, and takes her, the prize shall belong to the captor: but if she goes out of her course to seek plunder, she may be deemed a pirate. Now, it is not pretended that the *Livingston* took the prize in question; on the contrary, it is in testimony, that she was running away whilst the libellants were engaged with the enemy; and now claims a share of the prize, as having been in fight at the time of the capture.

THE right under which a vessel in fight may claim a share of a prize taken, is founded in a presumption of law, which supposes a vessel so in fight, and armed, and prepared for battle, to have induced a surrender. A presumption of law is a legal indulgence, and ought to be strictly confined within

the reason of the presumption. But no authority has been adduced to shew that this indulgence has been extended to a vessel not commissioned to take, unarmed, and flying from the scene of action.

THE Livingston cannot claim under the presumption of law, not being within the description; nor the United States under the general doctrine; because the prize was in fact taken by vessels duly authorized to take, which the Livingston was not. I adjudge, therefore, that the claim in this cause be dismissed, and that the brig *Recovery* be condemned as prize to the libellants.

Y O U N G

versus

THE SLOOP TWO FRIENDS.

Claim by Timothy Penny, for the vessel and part of the cargo; by Alden Bafs, for a quantity of glass and dry goods; and by Jerusha Fitch, for rum and dry goods.

TIMOTHY Penny, a citizen of the United States of America, having an estate in the island of Jamaica,

maica, obtained from congress a passport or safe conduct, for one Joseph Dean, to go to Jamaica and purchase a vessel there, which he was to load with "PRODUCE," on Penny's account, and to bring the said vessel and her cargo into any port of the United States not in the possession of the enemy.

IT appears that the sloop in question was so purchased by Dean, and laden in part on Penny's account: that Messrs. *Fitch* and *Tyler*, of Jamaica, being friendly to Dean, and privy to the purpose for which he had purchased the sloop, and the real destination of her voyage, put on board a quantity of rum and dry goods—the former, for the use of his mother, *Jerusha Fitch* and his son residing at Boston; and the latter for his friend *Alden Bass*, at Boston, who had charge of his (*Tyler's*) son: that the sloop, so laden, cleared out at the custom-house in Jamaica for New York, then in the possession of the British troops, and sailed under convoy of a British fleet, as for New York: that when she arrived on the American coast, the captain made three attempts to run her into Chesapeake Bay, but without success, notwithstanding several manœuvres to deceive the convoy. At length, being off the capes of Delaware, by slackening sail, under pretence of the mast's being sprung and a supposed

supposed leak, the captain dextèrously left the fleet in the night, and ran up the Delaware, where his sloop was taken by the libellants.

IT has been admitted on the part of the libellants, that this sloop did really intend for some port in the United States not in the possession of the enemy, and that the goods were *bona fide* shipped as set forth in the exhibits; and for the purposes alledged. But it is urged, that the safe conduct of congress ought to be strictly construed—that dry goods are not the *produce* of a Jamaica estate, and therefore not covered by the passport: that *Fitz* and *Tyler* are British subjects; and the property of the goods shipped by them not altered by the bills of lading, because those bills do not declare the use, the appropriation being only designated in private instructions, which, the parties might have revoked at pleasure; and that under these circumstances, being truly British property, they ought to be condemned as prize to the captor.

ON examining the complexion of this cause, I find that the peculiar circumstances of the case, require that it should be viewed in the liberal light of equity, rather than squared by the strictest rules
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of law. The intention of congress in granting the passport appears to have been to permit Timothy Penny to import the produce of his estate in Jamaica, for the benefit of himself and family; and it is but reasonable to suppose that they meant this should be done in the most beneficial manner. Had it been otherwise, congress would not have vested an important restriction on a single word of equivocal construction; but would have inserted a prohibitory clause in the passport. As to the law respecting bills of lading, it seems not to apply fully to the present case, because the whole arrangement of this business was framed with a view to cover the property from seizure by British captors, and not according to the custom of merchants in open commerce. These bills of lading and instructions were altogether confidential.

It must be allowed, that Fitch and Tyler, residing in Jamaica, and being professedly British subjects, had no right to ship goods for the United States; and as their part of the cargo is not covered by the passport, they ran great risk of confiscation into whatever hands they might fall. If it could be made appear, that these goods were to have been sold for their personal benefit, they would doubtless be prize to the captors. But as it is manifest from the testimony, and admitted

by counsel for the libellants, that the goods shipped by Fitch were for the support of his aged mother and his son at Boston, subjects of the United States, and that those shipped by Tyler were for use of his son, under the care of his friend Alden Bass, also American subjects, or to discharge debts already contracted on their accounts, it seems to be one of those cases to which the strictness of law ought not to be rigorously applied—more especially as there is little reason to apprehend that lenity here may form a dangerous precedent for hereafter, because a like case will probably never occur again—passports of this kind being very rare.

LET the libel be dismissed; and the sloop and her cargo be delivered to the claimants. But as there was such probable cause of capture, I adjudge that the claimants pay the costs and charges.

N. B. From this decree the libellants appealed; but the court of appeals confirmed the sentence.

PATRICK MAHOON & AL.

versus

THE BRIG GLOCESTER.

Libel for prize money.

THE Brig Gloucester had been captured by Roger Kean in the privateer Holker, and condemned as prize to the captors. The marshal being about to make distribution of the booty amongst the crew, according to the list handed in by captain Kean, was notified to stay in his hands 25 shares of the said prize, claimed by Patrick Mahoon, and others, as being a part of the crew belonging to, and concerned in the said privateer Holker. Notwithstanding that their names were not to be found in the captain's return; the libel, now before the court is for these 25 shares.

THE circumstances of this case appear, by the testimony exhibited, to be as follows.

THE printed articles of the privateer Holker were set up at a common house of rendezvous for the
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the enlistment of privateer's men, according to custom. The libellants, in common with many others, signed these articles, and made the necessary preparations for the cruise. When the *Holker* was ready to sail, the libellants, with the rest of the crew, repaired on board by order of the captain, and the vessel set sail. When they arrived at Chester on the Delaware (15 miles below Philadelphia) captain Kean mustered his crew upon deck, called over their names as subscribed to the articles, and then, without giving any reason for his conduct, selected Patrick Mahoon and 24 others, and ordered them on shore; refusing to let them proceed on the cruise, and when they earnestly solicited to be continued on board he forcibly drove them away, and the captain proceeded on his voyage, leaving the libellants behind.

A few days after Kean again called his crew together, and produced to them another printed copy of articles, which he urged them to sign. Some objected, observing that they had already signed, and did not understand signing two sets of articles for the same cruise; but the captain enforced them with threats and even blows, to sign the new articles; declaring at the same time, that his view

was to exclude those men whom he had left behind from having any share of the prizes they might take. The Brig Gloucester was captured during this cruise.

THE respondents have rested their cause principally on a plea to the jurisdiction of this court; alledging that the injury, if any, was exclusively of common law cognizance; because the libellants claim was founded in articles executed on shore, within the body of a country: that although the admiralty could determine the question of prize or no prize; yet it could not determine to whose use, having no jurisdiction in disputes between owner and owner, owner and captain, or captain and mariner, except only in the case of a mariner's wages, which is allowed out of special favour, and not of right, further than as *communis error facit jus*.

THE facts being fully ascertained, and not controverted, no difficulty arises from that quarter. It is in proof that captain Kean forced the libellants on shore after the voyage was begun, and compelled the remainder of the crew to sign the new articles, with a view to exclude the libellants from any advantage they might claim under the former

former; and it is contended that this court cannot redress the injury, because the suit respects *damages*, which the common law alone can ascertain. The truth however is, that the parties do not sue for redress of an injury; but for their shares of a prize legally condemned to the use of *the owners, officers, and crew, and of all persons belonging to, or concerned in the privateer Holker*: of which crew, they say, they are a part. The articles of enlistment, executed on shore, is no bar to the jurisdiction of the admiralty. Mariners are generally engaged on shore, and always sue for their wages in this court. In the one case the mariners are paid by monthly wages, or by the run, in the other by a share of the booty taken. There is the same reason in both cases. But I am of opinion that the articles are not the true foundation of a seaman's claim. If one or more mariners should enter on board a vessel, with the knowledge and consent of the master, should receive his orders and perform the duties of the station, they would be entitled to customary wages, or a proportion of the booty taken in common with the rest of the crew, although they had signed no articles at all, the right is not founded in the articles, but in the service.

It has been said, that this court can only determine the question *prize or no prize*, but cannot adjudge

judge to whose use. *Broom's* case in Carth. 399 and 475, is express in point to the contrary. The admiralty not only decreed *lawful prize*, but also to whose use, viz. to the King's; and Broom having converted the property to his own use, was sued in the admiralty by the king's proctor for the value. Broom applied for a prohibition, which was denied; because the court of admiralty, having determined the property to be prize to the king, this second suit was deemed to be only a continuation of the original process.

MOREOVER, it cannot be supposed but that during the many maritime wars in which England hath been engaged, contests about the rights of seamen to shares of prizes must have frequently occurred. If then such claims were only triable at common law, they would doubtless appear in some of the books of reports. But no actions of this kind can be found in those books, nor even prohibitions prayed for in such cases. The inference is, that such suits were allowed to be exclusively of admiralty jurisdiction.

IF Captain Kean had any reasonable objections against the libellants, he should have made those objections before he received them on board, or at least

least before the vessel had weighed anchor and commenced her voyage.

As the libellants were in fact forced from the service, I do not see why this wrong, on the part of the captain, should deprive them of the right they had obtained in this cruise by the enlistment, and by the captain's confirmation of that enlistment when he received them into his service.

I adjudge that the libellants have and receive their respective shares of the prize Brig Gloucester, and her cargo, in common with the rest of the Holker's crew.

: N. B. The respondents appealed from this decree; but the court of appeals confirmed the sentence.

PRINGLE AND SHEE

versus

THE ELIZABETH.

Claim by Charles Phile.

THE Brig Elizabeth arrived with a cargo of dry goods on the 26th of February 1781 at Gloucester, in the river Delaware, from Cork in Ireland : being the property of merchants of Cork, subjects of the king of great Britain when there was war between Great Britain and America.

CHARLES PHILE, the claimant hearing of this arrival, procured a deputation from the naval officer of the port of Philadelphia, dated the 27th of February; and on the same day went down to Gloucester, and seized the vessel under authority of his deputation, and by virtue of an act of assembly of this state.

IN this manner Phile possessed himself of the vessel, and afterwards had her brought up to the city, secured her at the wharf, and placed a guard on board.

AFTER this, viz. on the 2d of March the libellants entered on board this vessel, and by virtue of an ordinance of congress of the 26th of December 1776, authorising “ the people of the country, or
“ detachments from the army, to make prize of
“ the vessels and goods of the enemy that may
“ happen to be taken near the shore,”—seized the brig and her cargo as *lawful prize*, and on the same day made report to the judge of admiralty, that they had so done. On the 6th they filed their libel in the register’s office; and on the same day a writ of attachment issued, and the marshal of the court took possession of her in behalf of the libellants.

AFTERWARDS, viz. on the 10th of March, Charles Phile entered his claim in this court for the vessel and cargo, as a captor also, under the same ordinance of congress.

THESE transactions, as to the manner and time of the performance, stand uncontroverted by the parties. Of the remaining testimony exhibited in
this

this cause, there is but one circumstance of any importance, viz. when Phile made the seizure on the 27th of February, he was asked by the captain of the brig, by what authority he did it? and if it was for congress? To which he answered NO, *it was for the naval officer*. Then shewing the captain his deputation, he said, *that was his authority*.

SUCH are the materials upon which this cause has been argued, and it is urged in behalf of the claimant, that notwithstanding the prior date of Mr. Pringle's libel, Phile was in fact the first and real captor, and was in the actual possession of the prize at the time of the seizure made by the libellants: that although the claimant made his seizure by virtue of the deputation of the naval officer, and under the act of assembly, in which indeed he was mistaken in point of law, because the act does not touch the vessel, but the cargo only; yet being so possessed, he acquired a right which could not be injured by his error in judgment, and was good against any fellow-subject: that this right is founded on two principles, viz. *occupancy*, in the civil, and the doctrine of *remitter*, in the common law.

UNDER the first, it is said, that goods belonging to an enemy, being out of the protection of the

law, may be considered as *bona vacantia*, and he who can first get possession acquires a right in them by *occupancy*; and that this doctrine is the only foundation on which the right of capture is built: and, under the second, that, where a person obtains peaceable possession of property by an insufficient title, having a more ancient and better title, the law will *remit* him to his better title, and consider him as holding under that in preference. Both which doctrines are said to apply in favour of the claimant in the present case, inasmuch as he had possession of the vessel before the seizure made by the libellants and held her by *occupancy*; and that having a good right under the ordinance of congress to make prize of goods belonging to the enemy, and taken near the shore, although in fact he seized the same by virtue of his deputation from the naval officer, yet being so possessed, the law will not remit him to his better title.

ON the contrary it has been urged—That when the claimant first went on board this vessel, he stood in a two fold capacity, as a militia man of the country, and as the deputy of the naval officer, and that the rights and powers of these characters are as perfectly distinct in law as if they existed in two different persons: that when he was asked in which capacity he meant to act, he expressly declared that he made the seizure in behalf of the

naval officer : that when an agent so situated hath made his election, and afterwards finds himself in the wrong, he cannot have recourse to his better power to confirm an act done by an insufficient one : that Charles Phile, the present naval officer, seized the vessel, but Charles Phile, the militia man, who must, in the eye of the law, be considered as a different person, did not exercise the power given him by the ordinance of congress, and made no capture in that capacity, and therefore the vessel remained liable to capture by any militia man who should think fit to make use of the right vested in him by the ordinance, notwithstanding he might find her in the possession of the naval officer, or of his deputy, who, as such, had no power to hold her under the act of assembly.

THAT Phile cannot claim by *occupancy* more than the two men who rowed him down the river, and went on board with him ; and that the doctrine of *remitter* does not apply, because the ancient and better right alluded to, was not a right peculiar to the claimant, but which every militia man in the country held in as full force as himself, by virtue of the ordinance of congress. And finally, that be that ancient right what it may, the claimant disavowed and rejected it by his voluntary election, which throws the whole doctrine of *remitter*

out of the question, which is so purely an operation of law under particular circumstances, that the interference of the party is fatal to its effect.

THE question which first presents in this cause is—Whether the seizure made by the claimant, as deputy naval officer, operated as a capture of the *vessel* under the ordinance of congress or not? It is certain, that when Phile entered on board this brig, he was possessed of two distinct powers. By the one, derived from the act of assembly, he might have made a seizure of the cargo only; by the other, founded in the ordinance of congress, he might have taken as prize, both the vessel and cargo. In this situation the claimant explicitly disavowed and rejected his right under the ordinance, not only by words, but by unequivocal actions; and the law will not now force upon him a right so deliberately disclaimed, to the exclusion of another claiming under the same right, formally and expressly exercised.

IT is said, that no advantage ought to be taken of the ignorance of the claimant on a sudden emergency. But, besides that his procuring a deputation from the naval officer, and going four miles down the river to execute his purpose, cannot be called a sudden act, his subsequent conduct fully evinces
a deli-

a deliberate determination of the right on which he meant to depend. He made the seizure in behalf of the naval officer, under the act of assembly, on the 27th of February, and held the property by that title, to the 10th of March following, during which time no libel or information was filed by him in the admiralty office, no ship's papers produced, nor the vessel put by him into the marshal's possession, as a prize taken from the enemy. These circumstances operate strongly against the claimant's being considered as a captor under the ordinance of congress.

BUT further, even supposing him to have been the first and real captor of this vessel and her cargo under the ordinance, there yet remains a legal obstacle to his enjoying the prize; since whatever right he might have acquired as a captor, he forfeited it by his subsequent conduct. In the admiralty law of this state (p. 314) it is enacted, "If
 " any person who shall have charge of, or bring a
 " prize into this port, shall neglect or refuse to de-
 " liver up the same to the marshal of the court of
 " admiralty, and libel her within three days after
 " her arrival, such person shall forfeit all his inter-
 " est in the said prize to the use of the common-
 " wealth, and be subjected to the penalties of con-
 " tempt," &c. &c. It is evident, therefore, that

the claimant did not consider himself as the captor of a prize, till after the libel filed by Pringle and Sheé, otherwise he would have taken care to comply with the injunctions of the admiralty law.

As to the doctrines of *occupancy* and *remitter*, if they operated at all it must have been at the moment the claimant first entered on board this vessel; and if so, why does he not libel for the cargo as well as the vessel? But I am of opinion that no force can warp those doctrines to fit the present case.

JUDGEMENT in favour of the libellants.

DIXNEUF *versus* LACAZE.

Libel for wages.

A Parole contract was made at Cadiz, between captain Sherribeau, master of the schooner *Necessity*, and Dixneuf, the libellant, to this purport— that if Dixneuf would enter on board, and serve as mariner and carpenter, he should have the same wages

wages with the other mariners on board, and should be at liberty to leave the vessel on her arrival at Philadelphia, or to return with her to Cadiz, at his option : that if he should not choose to return with the vessel, he should be paid mariner's wages for the time he had served ; but if he should engage at Philadelphia to complete the voyage, the captain would then pay him the same advance he had paid the rest of the crew.

AFTER the schooner arrived at Philadelphia it seemed as if the libellant had made his election not to return with the vessel to Cadiz, because the captain was heard to desire him to continue to work on board as carpenter, and promised to pay him the same wages the carpenters of the country received. Some difference arising afterwards between the captain and Dixneuf, the captain failed without settling with him for his services. Whereupon Dixneuf now libels against Lacaze, one of the owners of the schooner *Necessity*, for his wages as mariner from Cadiz to Philadelphia, and for services as carpenter in the port of Philadelphia.

JUDGMENT, that the libellant shall have his wages as a mariner on board the schooner *Necessity* from Cadiz to Philadelphia, and that the bill be

dismissed so far as hath respect to a demand of wages for work done as a carpenter in the port of Philadelphia.

(1781.)

M I L L E R

versus

THE RESOLUTION.

*A claim filed in behalf of the shippers of the cargo ;
also a claim in behalf of the owners of the ship.*

THE ship *Resolution*, belonging to Brandlight and Sons, merchants in Amsterdam, sailed from the Texel on the 9th of January, 1780, bound for the island of St. Eustatius. This voyage was interrupted by stress of weather, which obliged her to put into Lisbon, where she remained some months to refit, but afterwards arrived at St. Eustatius. From St. Eustatius she sailed for the island of Dominica, where she arrived on the 1st of October, 1780. In March, 1781, she sailed from Dominica for Amsterdam, with a valuable cargo of sugar and coffee, shipped

shipped by sundry persons, certified to be *capitulants in the island of Dominica*; which cargo was consigned to Messrs. Brandlight and Sons, of Amsterdam, the owners of the vessel. Soon after the commencement of her voyage from Dominica, she was captured by a British armed vessel, and taken as prize into *Nevis*, where admiral Rodney examined her papers, and thereupon dismissed her. She again proceeded on her voyage, but was afterwards captured by another British vessel, from whom she was re-captured by an American privateer; from this privateer she was again taken by a British ship, and finally retaken from her by Peter Miller, the libellant in this cause, and sent into the port of Philadelphia. It is not contended but that in each and every of the captures and re-captures, she remained more than 24 hours in the possession of the conqueror. Being thus found in the hands of the enemy, and taken from them by force of arms, the libellants pray that both ship and cargo may be condemned as lawful prize and booty of war.

ARGUMENT.

BUT it has been contended in behalf of the claimants—That it appears in testimony that the island of Dominica did on the 7th of September, 1778, surrender by capitulation to the marquis *de Bouillé*,

Bouillé, general of the French forces in the Windward Islands—that by the terms of this capitulation, all the property and estates in Dominica, with their produce were secured to the inhabitants, and protected from confiscation; particularly by the 17th article, in these words—“ The merchants of
 “ the island may receive vessels to their address
 “ from all parts of the world (English vessels ex-
 “ cepted) without their being confiscated; and
 “ they may sell their merchandize, and may carry
 “ on their trade, and the port shall be entirely free
 “ for them for that purpose, paying the customary
 “ duties paid in the French islands.” And it is alledged, that this privilege and protection was extended to absent persons having property or concerns in the island, by virtue of the 9th article of the same capitulation in these words—“ The absent inhabitants, and such as are in the service
 “ of his Britannic majesty, shall be maintained in
 “ the possession and enjoyment of their estates,
 “ which shall be managed for them by their attornies.” That these United States being in strict alliance with the court of France, are bound by the terms of every capitulation, convention, or treaty, which the court of France, or any person or persons under that authority, shall make in the course of the war, the war being a common cause, and both allies principals in the conduct of it:—
 that

that it was also in proof, that the king of England, by his proclamation, dated in December, 1780, extended the effects of the capitulation of Dominica, to Dutch vessels for four months, notwithstanding the rupture between Great Britain and Holland, by the capture of St. Eustatius : and, that this ship, under the sanction of the said capitulation which secured her and her cargo from capture by the French or Americans, and under the said proclamation, which protected her from British capture, sailed from Dominica, with the property of capitulants on board ; and that the passport of monsieur *Duchilleau*, the French governor of Dominica, endorsed on the manifesto of the cargo, ought to protect this property from being made prize of by the friends and allies of France.

IT has been further insisted—That a re-captor acquires no other right than what the captor had ; inferring that as the British captor could not have procured a condemnation (as appears by the acquittal of admiral Rodney) neither can an American re-captor make this vessel legal prize—that the British captain should be considered as a pirate, and that the law is, that goods taken by pirates, and again retaken from them, shall be restored to the former owner—that if it should be objected, that most of
the

the real consignees of this cargo are not inhabitants of Dominica, and therefore not within the capitulation; it is answered, that article the 9th extends the operation of this capitulation to absent inhabitants, even such as are in the service of the king of Great Britain having property in the island, whose business may be transacted by attorneys; and that if the attorney is an inhabitant, and signed the capitulation, it is the same thing in effect as if the principal had done it. And, lastly, that although no express authority can be produced to prove directly that allies in war are bound by the capitulations, conventions, and treaties of each other, reciprocally; yet a striking analogy may be found in the case of *ransom*. That it cannot be denied, but that if a French vessel takes a prize, and *ransoms* her for a limited time, the ransom bill would protect the property from capture and condemnation by the Americans. If, therefore, the act of an individual captain of a French privateer can screen the property of an enemy from an ally, much more should the solemn capitulation of a French general with the whole inhabitants of a captured island bind the same ally.

To this it has been replied; that the ship *Resolution* and her cargo were found in the possession of the enemy, who held the same by force as
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their property for more than 24 hours which brings the case strictly within the ordinance of congress of February last, which excludes any claims of former owners after a possession of 24 hours by the enemy : that we have no business to enquire by what right the enemy became possessed : it is sufficient for us that we found it there : that the doctrine respecting pirates does not apply, because the British as a sovereign nation has an undoubted right to wage war, and to take prizes, which pirates have not : that if any subject of a sovereign power takes unlawfully, let him or his prince answer the wrong, the re-captors at war with them being altogether blameless, whose right to take from an enemy cannot be doubted : that it appears evidently by the letters and other exhibits in this cause, that this cargo is in fact British property, and not the property of the inhabitants of Dominica ; and although consigned to merchants in Amsterdam, the nett proceeds were to be remitted to merchants in London, and other parts of the British dominion : that it is absurd and untrue to suppose that the benefits of the capitulation were designed to extend to London merchants who had never been inhabitants of the island of Dominica, and who are and will remain British subjects, aiding, by their
wealth

wealth and influence, in the war against France and her allies: that the capitulation included only real inhabitants, either present on the island, or absent on business at the time, and placed them in a state of perfect neutrality with respect to the war; a character which can by no means be applied to the real consignees of this cargo: that if the effects of this capitulation were to be thus extended, France would have obtained a conquest which can produce nothing but expence, trouble, and loss to her, but will tend to strengthen and enrich the enemy; and that it would be for the present, the interest of Great Britain to surrender all her West-India islands upon the same terms.

It has been further urged by the counsel for the libellants, that allies are not mutually bound by every *ex parte* treaty or convention: that consent is necessary to include one in the engagement made by the other; as for instance, in a truce or cessation of hostilities: that France does not deem herself so bound, is evident from her conduct with respect to Bermuda and the Bahama islands, whose property congress have exempted from capture and condemnation by Americans; yet their vessels are confiscated in the
French

French courts of admiralty: and that this exemption, granted by congress to Bermudians, runs strictly parallel with the terms granted by the French general to the people of Dominica, so far as allies in war were to be affected by such treaties.

THAT the law respecting *ransoms* cannot apply to the present case, because, if, after our ally has made a capture, and discharged the prize on a promised ransom, we should violate the ransom bill, we should in fact plunder our friend of his actually acquired property; and it is for this reason that allies are bound by ransom bills: that this case coming precisely within the ordinance of congress respecting 24 hours possession by the enemy, this court is bound to decree according to that ordinance, and hath no power to judge how far its operation may, or may not, under particular circumstances, affect the terms of our alliance with France, the true limits of which are only to be ascertained by the sovereignty of the states, and are not submitted to the determination this court.

THAT, as to the passport subscribed by monsieur *Du Challeau*, he did it as a matter of course in

consequence of the depositions annexed to the bills of lading, which were taken by the British judge of the island, and who might probably be in the interest of the parties ; or, at least, that it was done with the official negligence too usual in passing custom-house papers. It was further suggested, that the manifest variance between the bills of lading, with their depositions annexed, and the private letters of advice found on board ; the direct fraud manifest in some of those letters, and the mysterious complexion of others, are alone sufficient to justify a condemnation of this property ; double papers and fraudulent clearances being legal cause of confiscation.

IN short, that this whole business appears to be a mercantile scheme concerted between British merchants and Brandlight and Sons, of Amsterdam, in conjunction with the shippers at Dominica, to impose on the French governor, and to derive an unfair advantage from the liberal terms of the capitulation : that, if this property is to be deemed *neutral*, the true doctrine is, if a neutral voluntarily puts his property on board an enemy's ship, he does it at his own risk ; but if an enemy unjustly takes neutral property, and the same is retaken, the remedy is against the enemy who did the wrong, and not against the recaptor who only did his

his duty : that it is true, that the passport of governor *Duchalleau*, recommends this vessel to pass unmolested by the friends of France, but does not say she shall not be taken from the enemy in case she should fall into their hands : that if the inhabitants of *Dominica*, in their present situation, be considered either as French or as British subjects, still the recapture is good ; if French, then the property (supposing it to belong to the shippers) having been more than twenty four hours in the possession of the enemy, is prize to the recaptor by the marine ordinances of France and America ; if British, it belonged to the enemy, and is therefore prize. And lastly, that this capitulation should not be construed to extend further than the protection of property upon the island, and within its ports and harbours, but cannot reasonably be expected to insure safety on the high seas in the midst of a raging war.

J U D G M E N T.

THIS cause, so far as it respects the cargo of the ship *Resolution*, rests principally on one question, viz. whether the United States by their alliance with France, are, or are not to be considered as parties in the capitulation made by the Marquis De Bouillé with the inhabitants of *Dominica*.

minica. No authority has been produced, and I believe that none can be, to shew that allies are mutually bound in all cases. It is manifest, that it is not generally so understood; because it is usual in forming treaties of alliance to insert special clauses specifying those cases, wherein the promises and engagements of the one shall bind the other: for it would be a very dangerous doctrine that should bind sovereign powers in engagements to which they had neither expressly or implicitly given consent, or that one ally should necessarily become a party in the conventions which the generals and officers of the other may, under particular straits and circumstances, make with the common enemy, unless the ally be mentioned in the convention, and the terms thereof be afterwards acceded to by him. Thus, in the case of Dominica, had governor Stuart, when he surrendered the island to the marquis de Bouillé expected that the United States should be bound by the terms of the capitulation, he would have made this one of the articles, and not entrusted so important a point to a speculative question, how far one ally may or may not be virtually bound by the engagements of the other. This, however, he has not done, either because it would imply an acknowledgment of the sovereignty of the United States, or because he deemed the objects of the capitulation to be limited.

mitted to property within the island. Be this as it may, the British could not reasonably complain that the French had violated the articles of the capitulation should the Americans take the goods of the inhabitants of Dominica found upon the high seas, because such an assurance made no part of the stipulation. “ If he who can and ought to
 “ have explained himself clearly and plainly, has
 “ not done it, it is the worse for him ; he cannot
 “ be allowed to introduce subsequent restrictions
 “ which he has not expressed.” Vattel, B. 2. ch. 17. sec. 174.

BUT whatever doubts there may be of the right of Americans to take the property of the people of Dominica under the present circumstances, there can be none of taking British property, wherever found, without any danger of impairing the friendship of our good ally. And from a scrutiny of the papers found on board this vessel, there is strong reason to believe that this cargo, however artificially covered, is, in fact, British property.

As to the general doctrine respecting allies, the case of Bermudas is, I think, strong in point. The vessels of that island were by congress exempted from capture by Americans, and yet the French

made prize of them whenever they could; nor was it ever suggested, that they had thereby violated the faith of the alliance. Had the British expected, or France desired, that the United States should be parties in the capitulation of Dominica, it cannot be doubted, but that this would have been made one of the terms of that capitulation, or that France would, e'er this, have signified her desire to congress, and that congress would have instructed the masters of privateers as to this matter.

HAVING made no national agreement to spare the property of the people of Dominica, when found on the high seas, much less are we bound to rescue it from the hands of an enemy at our risk and expence, in order to restore it, salvage free, to their use. This would be to put them on a better footing than our own merchants, whose property, after 24 hours possession by the enemy, would be confiscated to the re-captor, whereas it is contended that no confiscation whatever should pass on the property of the people of Dominica.

BEING fully satisfied as to this general point, it renders a minute display of the striking contradictions between the bills of lading and letters of advice, and other papers found on board this vessel, the less necessary. Many of them are manifestly frau-

fraudulent; and although the property is carefully wrapped in neutral covers, the nett proceeds appear to be finally intended for subjects of Great Britain, residing at London or elsewhere.

WITH respect to the king of England's proclamation, I conceive that it is founded on partial, not on general grounds. Were it not that this, with four or five other Dutch vessels were at this time to sail from Dominica, freighted with the property of British merchants, it is more than probable that this proclamation had never been published.

I adjudge that the cargo of the ship Resolution be condemned as lawful prize to the libellants; and that the ship Resolution, with her tackle, apparel and furniture be restored to Brandlight and Sons, merchants of Amsterdam.

N. B. The claimants appealed from this decree; and, after long argument, the judges of appeal reversed the decree, so far as the same respected the condemnation of the cargo, which they fully acquitted, upon the shippers paying freight to the owners of the ship.

THERE was afterwards a re-hearing of this cause before the court of appeal, on a suggestion

of new testimony having been found amongst some papers taken in a ship (the *Ersten*) bound from Ostend to Dominica: but the court adhered to their judgment; except only as to some part of the cargo, which was condemned on account of irregularities in the bills of lading, and letters of advice, respecting those particular articles.

C A S S E N

versus

THE TRISTRAM SHANDY.

CASSEN, commander of the privateer ship *Rising Sun*, sailed from the Delaware, in company with the sloop *Jane*, commanded by Samuel Young, the claimant: the sloop being under convoy of the ship. Both vessels belonged to the same owners (one person excepted, who had a share in the sloop, but was not concerned in the ship.) The ship was bound on a cruise, as a privateer, and the sloop on a trading voyage. Whilst these

these vessels were yet in company, they discovered the brig *Tristram Shandy*, a vessel belonging to the enemy, and got to windward of her. The ship then bore down upon, and took the prize; but the sloop, without changing her course, proceeded on her voyage. It is also in evidence, that the sloop was observed by the crew of the prize, eight or ten minutes before she surrendered, at the distance of about six miles. Whereupon, the owner, who is singly concerned in the sloop, has filed a claim, in the name of Samuel Young, *qui tam*, for a share of the prize, as being in sight at the time of the capture, under the general rule of law.

AGAINST this claim it has been urged, that the sloop ought to have no share in this prize, because it is in testimony, that she not only did nothing towards the capture, but, in fact, avoided it, not altering her course, or manifesting the least intention to be considered as a joint captor; insisting, that an intention to possess is requisite to the acquirement of property—that although by the rule of law, it is not necessary to enquire how far a vessel in sight, did or did not contribute to the capture of a prize, yet some attempt, some inclination, to take, ought to appear, otherwise the law will not force property on those who voluntarily abandon it; and

the case of *Rice* versus *Taylor* was particularly referred to, and relied upon. (Vide p. 16.)

ARBITRARY rules and presumptions of law are established in profound wisdom, and are the result of much experience. Passing by the uncertain equity of certain cases, they look only to general justice. All that is necessary in the application of them is to ascertain whether the case comes within the rule or not. If it does, the rule ought not to be violated, nor should any evidence be admitted to defeat its operation; because the law, delighting in certainty, will not suffer an investigation which can occasion contradictory testimony, perjury, and endless litigation.

IN the case of *Rice* versus *Taylor*, the jury found that the claimant's vessel did not, by her presence, contribute to the surrender of the prize; her situation rendering it in fact impossible; and, therefore, the claim was dismissed, the case not coming within the verge of the legal presumption. But no such impossibility appears in the present case. Had the enemy been a match for the ship, or made an obstinate resistance, the sloop was sufficiently near, and in a capacity to join her force. But as the prize was not able to maintain a contest with the ship, it is to be presumed that the sloop's continuing

tinuing her course, was not an abandonment of any share or concern in the prize, but because that she saw that her assistance was altogether unnecessary.

THE supposed want of an intention to take, is not sufficient to exclude the claimants from a share of the prize. The claim filed in this cause is proof of at least an intention to possess whatever the law may award. And although it has been suggested, that this suit is in fact brought by one of the owners, in the name of the captain and crew of the sloop Jane, who are absent, and had no intention of making such claim, yet the court will not allow the distinction, but consider captain Young and his mariners as prosecuting their suit by their proctor.

NEITHER is there any reason why the circumstance of the sloop's being under the convoy of the ship, should affect the right of the claimants. The assistance which one vessel may give another in battle is the reason of the law, and this reason is as applicable to vessels under convoy as to any others. Whenever two vessels of the same nation are in company, they are under reciprocal protection, and mutually bound to assist each other: but when a vessel of superior force falls out of her intended course, or is purposely sent for the protection of another, the owners of the latter should make recom-

recompence for the service ; but this will not exclude the protected vessel from those rights which her force, small as it may be, may entitle her to, and which the general rule of law assigns without distinction.

J U D G M E N T.

THAT the Tristram Shandy be condemned as lawful prize to the captors ; and that the claimants have a share of the said prize, in proportion to the men and guns on board the sloop Jane at the time of the capture.

ROBESON *versus* THE AMELIA.

THE brig Amelia failed from Charlestown, then in the possession of the enemy, *as a flag of truce*, to the city of Philadelphia. After her arrival she began to unlade sundry goods and merchandizes : the libellants considered this as a violation of the
 flag,

flag, and accordingly libelled against her in the court of admiralty.

J U D G M E N T.

THAT she be condemned as lawful prize.

NICHOLAS HAINEY

versus.

THE TRISTRAM SHANDY AND DIMSDALE.

A Libel for Prize Money.

HAVING entered as a landsman on board the privateer *Rising Sun*, and signed articles for a cruise of four months: the privateer was successful; and the libellant was sent in with one of her prizes, and soon afterwards fell sick. During the cruise the *Rising Sun* came into port to refit. Being at Philadelphia, a great part of the crew left her;

her; whereupon the captain (or owners) published an advertisement, calling upon the officers, seamen, and mariners, belonging to the *Rising Sun*, to repair on board by a certain day, in order to complete the cruise. One third of the crew, however, neglecting to appear, the owners and officers agreed to break up the cruise, opened a new rendezvous, and enlisted a crew under a new set of articles. The ship failed on this second cruise, the four months of the first having not yet expired. Soon after her last sailing she captured the *Tristiam Shandy*, and the *Dimsdale*, both which were condemned as prize. It appeared in testimony, that the *Tristiam Shandy* was taken before the expiration of the first cruise, and the *Dimsdale* some days after. The libellant did not appear on the day advertised, neither did he sign the second set of articles, being sick at the time.

As this cause touches a general doctrine, viz. how far owners are justifiable in breaking up a cruise, without the consent of all concerned, it wears a face of considerable importance. I have attended to it in this view, and am of opinion, that shipping articles form a contract between the owners on the one part, and the officers and crew on the other, and are for the period specified, in
full

full force with respect to the contracting parties. And this contract is not made with the officers and crew as an aggregate body, but with each mariner individually. Upon this ground, I think the contract cannot be totally dissolved (as hath been contended) by the will of any majority on either side, however great. If a single mariner withholds his consent, and the cruise is broke up by the rest of the concerned, and a new cruise commenced, as in the present case, this must be done, subject to the legal claim of the unconsenting mariner, of wages or prize money that may accrue during the term of the first cruise for which he contracted. If it were otherwise, if owners could for their own convenience, or from an apparent or real necessity, break up a cruise, those of the crew who may be languishing in captivity, or may be confined on shore by wounds or sickness incurred in the service of the ship, or otherwise, might be excluded from the advantages of a period of time for which they had engaged to run all hazards, and of which they may as yet have only experienced the misfortunes.

J U D G M E N T.

THAT the libellant have a landfman's share of
the

the prize brig, *Tristram Shandy*, and that the bill be dismissed with respect to a share of the *Dimf-dale*.

R. C. B. E. *versus* THE FANNY.

JACOB Miller, and others, had formed a compact to purchase a vessel, load her with provisions, naval stores, &c. and then clear her out from the port of Philadelphia, as for some legal voyage; but, in fact, to take her into New York, for the supply of the enemy. The *Fanny* was purchased for this purpose. But, before the scheme was ripe for execution, one Hollingshead, who was to have been sailing master for the voyage, divulged the secret. In consequence of which the libellant seized the vessel at the wharf where she had lain previous to the time when Miller purchased her for the purpose aforesaid. One Riggins, who was also privy to the plan, confirmed the testimony of Hollingshead, as to the general scheme.

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At the time of the seizure, the brig had taken in only twenty barrels of Tar, and had not yet shipped her mariners.

THE testimony in this cause amounts to no more than a treasonable intent. Had this vessel received her cargo on board, shipped her mariners, and hawled off from the wharf, the intent would then have been so far carried into execution, as that the vessel and cargo might have been confiscated, and the parties punished under the ordinance of congress. As the case stands, the owners might have changed their minds as to the general design, or they might have thought some other vessel more suitable to the purpose. To bring the matter properly before this court, the identical vessel employed in an illegal design must be taken in the fact, for the admiralty cannot confiscate one vessel for the fault of another although belonging to the same owners. A vessel cannot be said to be taken in pursuit of an illegal voyage whilst she remains fast at a wharf, without a cargo on board, and without mariners.

LET the bill be dismissed.

WILLIS *versus* THE BRIG YORK.

THE question before the court was, Whether the right of a deceased mariner to a share of prizes taken during a cruise, is inheritable or not? The case was : one Joel Willis enlisted on board a privateer for a certain cruise : A short time before the determination of the cruise, according to the articles, he fell sick, and died on board the privateer. Soon after his death, and within the term of the cruise, the prize brig York was taken. Whereupon Seth Willis, the brother and administrator of Joel, libelled for a share of the prize.

THE arguments of council respected the general principle of law ; but the judge, not willing to determine the general question, directed testimony to be exhibited on the particular circumstances of the case. This was done, and the cause submitted, without further argument, to a decision on the equity and merits of the case.

WHEREUPON a share of the prize was adjudged to the administrator.

GIBBS *versus* THE TWO FRIENDS.

THE brig *Sufannah*, belonging to George Gibbs, cleared out from the naval office in the port of Rhode Island, and sailed with a cargo on board, as for Hispaniola, but in fact for Turk's Islands. Being on her voyage she was discovered, pursued, and captured by Josiah Crane, master of the brigantine *Two Friends*, belonging to subjects of the United Netherlands, and furnished with letters of marque and reprisal against the subjects of the king of Great Britain. Holland had not at this time entered into any treaty with, or acknowledged the independence of, the United States of America. Captain Crane took out part of the crew of the *Savannah*, and put a prize master on board, and ordered her for Philadelphia; but the *Sufannah* was again captured during her voyage

age

age to Philadelphia by a British privateer, taken to New York, and there condemned. The *Two Friends* arrived at Philadelphia, where Gibbs the owner of the *Sufannah* libelled against her, and against captain Crane for reparation of the loss and damage sustained.

IN considering this case, two obvious points present, viz.

FIRST. Hath the brig *Sufannah* so offended by her intended voyage to Turk's Islands as to afford probable cause of capture and confiscation?

SECONDLY. If not, who ought to satisfy the owner for the loss of his vessel and cargo?

ON the first point the question occurs, whether Turk's Islands, may, or may not, be considered as property under the dominion of Great Britain? Whatever might have been the situation of these islands in the years 1778 and 1779, it is evident that at present they are abandoned by every nation, there having been no officer who hath exercised civil or military powers there under the authority of any government whatever for at least these two years past. If the British ever had legal dominion over these islands, they have abandoned

bandoned their right, and released the inhabitants from all allegiance by withdrawing all protection. So that those people may truly be said to be in a state of nature, unless they have formed some government of their own. What offence then can arise from trading with those islands? It is plain, from the clearances and entries in our own naval offices, that this trade hath not been deemed unlawful: and it is also in evidence, that American, French, and Spanish vessels, constantly go to these islands for salt, and no body hath heretofore questioned the legality of this commerce.

BUT is said, that the variance between the office clearance and an invoice found on board, marking the real destination of the voyage, affords probable cause of capture, and even a sufficient ground for confiscation. I find, however, that it is not an unusual practice for merchants to clear out as for one legal port, but with a design of going to some other legal port, in order to conceal the real voyage, for mercantile purposes. Nor hath this practice ever been deemed an offence, or the papers found on board a vessel under such circumstances been considered as double papers, such as should induce a condemnation.

THE next question is, Who ought to be answerable for the injury done? the captain, or his owners, or both?

THE relation between the owners and master of a vessel hath, to many purposes, been considered as that of master and servant; and the law is clear, that the master is bound by whatever the servant doth by his order, under his authority, or in the prosecution of his service. See 1st. Black. 429. It has been contended, however, that captain Crane was not in the prosecution of his owners service when he made this capture, the object of the voyage being merely mercantile, and not to take prizes. But as this vessel was duly commissioned to take prizes, and the owners and captain would have shared the produce of a legal capture, this distinction cannot be admitted, but the owners and captain must be considered as jointly answerable.

JUDGMENT in favour of the libellants for £ 1305 specie, with costs.

N. B. An appeal, and the judgment confirmed.

C L I N T O N

versus

THE BRIG HANNAH AND SHIP GENERAL KNOX.

A Plea to the jurisdiction of the court was filed in this cause: and the question was, Whether a *Ship-Wright* might sue in the admiralty for his contract wages for building a ship or vessel designed for navigation on the high seas?

AFTER long argument, the judge gave his opinion as follows.

THE authorities which the libellants have urged in favour of the jurisdiction of this court, in the present case, are Cro. Ch. 296. and 1st Rolle 533. All the other authorities adduced having reference to those, except one in 1 Stra. 707.

IN the first edition of Cro. cha. page 296, we find resolutions upon cases of admiralty jurisdiction

subscribed by all the judges of both benches, in April, 1632. Wherein, amongst other things, it is resolved, that a ship-wright may sue in the admiralty, provided his suit be against the ship. *Rolle*, as a faithful abridger, gives the law as it then stood under the authority of these resolutions. In article 19, he mentions the doctrine respecting ship-wrights, and cites the case of *Tasfer* and *Gale*. And in article 21, he gives the law respecting charter parties, adding these remarkable words: "As it was declared by the court to have been lately resolved by all the judges of England." So that those resolutions seem to be the only foundation upon which these doctrines rest. And it is very observable, that although *Croke* records the resolutions as they were subscribed in Hillary term, the eighth of Charles, yet he does not report the case of *Tasfer* versus *Gale*, although adjudged (according to *Rolle*) in the ninth of Charles, which must have been but a few months after. Neither hath any other reporter of that period noticed this case. From which it seems probable, that those resolutions, and the judgment in the case of *Tasfer* versus *Gale*, were not admitted as good law even in that day.

BUT

BUT it is further observable, that when *Sir Harbottle Grimestone* published Croke's reports in the year 1657, he prefixed, even to this first edition, a declaration under the title *Mantissa*, that the resolutions of the judges in Feb. 1632, were not of authority: and for this reason (according to Comyns) those resolutions were totally omitted in the subsequent editions of that work. Since that time no instance can be found in the books, where either these resolutions, or the case of *Talker versus Gale* adjudged thereupon, have been referred to either by the court, or in the pleadings in any adjudged case, except in the case of *Wooward versus Bonithan*, *Sir. T. Raymond*. p. 3: and there the court declared, that those resolutions had been denied by several judges, and renounced by even some of those who had subscribed them. And of this, *Danvers* also takes particular notice, p. 271. Therefore the authority of these resolutions seems to have been abolished by general consent.

BUT another case has been referred to as authority in point, viz. 1st *Str.* 707. The report is very short, and in these words: "On a motion
 " for a prohibition, it was held, that a *carpenter*
 " may sue for wages in the admiralty." This report, however, is too slight and solitary to au-

thorise a decision contrary to general established rules. The word *carpenter* doth not precisely indicate a ship-wright, but may be applicable to a mariner on board a vessel; and as the cases referred to in the margin of this report, respecting the officers of a ship who sued in the admiralty as mariners, the probability is, that this also was an officer called the *ship's-carpenter*: A doubt having arisen whether the subordinate officers of a ship, as well as the master, were not prohibited from suing in the admiralty for wages.

IF the resolutions of the judges in 1632, and the decision in the case of Tasker versus Gale, were admitted as law, and if the carpenter mentioned in 1st Stra. 707, was the ship-wright or builder, how is it possible that the judges so lately as the 1765, should declare in court, that no instance could be found where both the contract and service were to be done on land, within the body of a country, that the common law courts ever permitted the admiralty to have jurisdiction? I refer to 2d *Wilson*, p. 265: and this opinion was given in the case of a pilot suing for services done, indeed within the body of a county, but in a case of a much stronger maritime complexion than the present.

THERE are several exceptions to the general rules of law respecting admiralty jurisdiction, as ascertained by the statutes: such as suits for mariners wages, and on hypothecations made by the master in foreign parts, &c. &c. which have been so often contested, and so often allowed, for good and weighty reasons, that they have become confirmed law, and it would be in vain now to oppose the general rule to the general practice. But this does not appear to the case with respect to ship-wrights; neither are the same reasons applicable to them. Their contract is made with persons whom they know, or ought to know; their services are all executed within the body of the county, and mostly on dry land above high-water mark; their wages have no reference to a voyage performed, or to be performed; the ship-wrights have no interest or concern whatever in the vessel after she is on float, and the merchant hath paid for her; and lastly, the practice of former times doth not justify the admiralty's taking cognizance of their suits.

LET the bill be dismissed, as not being within the jurisdiction of the court.

PIERRE DE MOITIZ

versus

THE SOUTH CAROLINA.

ON a plea to the jurisdiction, it was adjudged, that mariners enlisting on board a ship of war, or vessel belonging to a sovereign independent state, cannot libel against a ship for wages due.

KEMP

versus

THE EXPERIMENT.

THE schooner Experiment belonging to subjects of the United States; was on her voyage from
James

James river, in Virginia, to Baltimore, in Maryland, with a cargo of rum and salt, and a few barrels of tar; the cargo being also the property of subjects of the United States. She was taken in Chesapeak bay by some of the enemy's boats, called refugee boats, and sent under the command of a prize-master to New York. In her way to New York, she was re-captured by the libellant, and sent into this port, having been several days in the possession of the enemy.

ON the trial, one of the owners of the cargo appeared, and urged the tenor of an ordinance of congress, passed the 26th of February, 1782, in his favour, respecting the vessels and cargoes of subjects of the United States, going from one port to another, and taken within any arm of the sea, &c. laden with the produce of the country, and afterwards retaken by a fellow subject: ordaining, that the same shall be restored to the first owner, on payment of reasonable salvage, not exceeding one fourth of the value, without any regard to the time of possession by the enemy. But as it appeared, that the cargo was foreign produce (except only two barrels of tar) the party withdrew his claim.

AND so the vessel and cargo were condemned as prize to the libellant.

PATRICK MAHOON, & ALI.

versus

THE LADY MARGARET.

PATRICK Mahoon, and twenty-four others, filed a supplemental libel against the ship Lady Margaret, for that they having duly enlisted for a cruise, on board the privateer *Holker*, and being ready and willing to perform their duty, were forcibly turned on shore by Roger Kean, the captain, and prohibited from going the cruise, in which the prize ship Lady Margaret was taken. Whereupon process issued against captain Kean, *et contra omnes*, to answer to the said libel.

THESE are the same libellants who recovered against the *Glocester*, two years since, on a like plea.

plea. (Vide p. 55.) In the case of the *Glocester*, the council for the respondent did not minutely investigate the facts: but admitting the testimony, as produced on the part of the libellants, respecting the force used, rested the defence solely on points of law. The facts were now more strictly scrutinized, and new testimony adduced, amongst which the respondent presented the deposition of Silas Foster, one of the Holker's crew: but it was objected, that Foster was an interested witness, and that his testimony ought not to be admitted. After full argument thereupon, the judge decided this point, as follows:

THE question under consideration, respects the competency of a witness produced by the respondent in this cause. On the one side, a general principle of law hath been urged, viz. that a person interested in the event of a cause, shall not be allowed to give testimony in that cause: and, on the other, an exception to this general rule, viz. that if no further or better evidence can be had, an interested party may and ought to be heard, from the necessity of the case, his interest only affecting his credibility, not his competency. And the danger of an unhappy precedent in the rejection or admission of the witness now offered, hath been sufficiently enlarged upon on both sides. But

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I cannot see the danger apprehended, since the determination in the present case, can be no rule for any other, unless the circumstances of both should be precisely similar; because, the court will always take into consideration the degree and nature of the interest, that should exclude a witness under the general rule, and the reality of the necessity to admit him under the exception, and also judge of the credibility, according to circumstances. To this purpose I refer to laws of *nisi prius*, p. 286. “ Scroggs, ch. jus. said, that it ought
 “ not to be a general rule, that members of corpo-
 “ rations shall be admitted or denied to be witnesses,
 “ in cases for or against their corporations: but
 “ every case stands upon its own particular cir-
 “ cumstances, viz. whether the interest be so con-
 “ siderable as by presumption to produce partiali-
 “ ty or not. And this exception has of late years
 “ been much extended. In the case of the *King*
 “ versus *Bray*, lord chief justice Hardwicke * said,
 “ that unless the objections appeared to him to
 “ carry a strong danger of perjury, and some ap-
 “ parent advantage might accrue to the witness,
 “ he was inclined to let it go to his credit only, in
 “ order to let in a proper light to the case, which
 “ would otherwise be shut out.”

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* Hardwicke, p. 360.

IN order, therefore, to decide on the competency of the present witness, it will be necessary to take a view of the circumstances of the case, so far as they respect him, or his interest, in the cause.

THE ship *Lady Margaret*, was, by a decree of this court, condemned as prize to the captors. The marshal, after making sale of the property, advertised as usual for all persons who had any claim thereupon, to appear in person, or by agent, and receive their respective shares. *Foster's* agent accordingly appeared, and received his share, which was afterwards paid over to him, as appears by his receipt to the said agent. The present libellants issued no prohibition to the marshal, to stay his proceedings, nor intimated any design of claiming shares in this prize. The marshal, therefore, went on and completed his business, with respect to this vessel and her cargo, and filed his accounts and returns, dated Feb. 1781, in the register's office; by which accounts it appears, that full distribution had been made. The present libellants having recovered in the case of the brig *Glocester*, a prize taken by the same privateer, and in the same cruise in which the *Lady Margaret* was captured, now claim shares in the *Lady Margaret* also, upon the principles of the former decision in their favour. The captain of the privateer

hath

hath filed his answer in opposition to this claim, and offers *Foster* as witness in his behalf : but it is alledged that *Foster* may have an interest in the event of this cause, upon a suggestion, that although the marshal hath in his returns, fully balanced his accounts respecting the Lady Margaret, yet he hath done it wrongfully, by charging extravagant and illegal commissions, as appears upon the very face of his returns. So that there is in fact a part of that prize yet in his hands, a distributive share of which *Foster* will be entitled to, if the libellants should fail in their suit, he being one of the captors of that prize.

It seems then, that *Foster's* interest depends upon two contingencies — First, that the libellants shall fail in their present claim : and, secondly, that the marshal shall not be able to justify the commissions he hath charged.

If this interest depended upon the first contingency only, it might be deemed too closely connected with the event of this cause, to admit him as a witness of full credibility : but when the nature of the second contingency is considered, viz. that it is now full two years since the marshal made his returns, and that neither *Foster*, nor any of the concerned, have objected to the commissions charged

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ed, or manifested any expectations of receiving further advantages from the Lady Margaret, his interest, if any, seems to be so very remote, as not to *found any reasonable presumption that it will produce partiality, or to carry a strong danger of perjury.*

THE use of testimony, is to ascertain truth, that justice may be administered. Therefore, witnesses ought not to be rejected on slight grounds of disability, or on mere suggestion of a distant interest, especially in maritime suits, where from the scene of transaction, a totally disinterested testimony can seldom be procured. But the court will always make allowance in the credit, according to the circumstances.

LET Foster's testimony be admitted.

JUDGMENT ON THE MERITS.

IN order to determine this cause to my own satisfaction, I find it necessary to state and consider three points, which will, I apprehend, include all the principles that can affect this controversy.

THE *first* question is, Whether those who sign the *Holker's* articles, after notice given that her
 3 compliment

compliment of men was full, and that no more could be received on board, and who did not go the cruise, although their not going should be occasioned by a forcible rejection, ought to draw shares of all, or any of the prizes taken in that cruise?

It appears by the deposition of Henry Martin, the keeper of the house of rendezvous, that although Fletcher, one of the Holker's officers, informed many who applied that they could not be admitted, because the privateer's compliment of men was complete, and that they would be turned on shore if they came on board, yet they persisted to sign the articles, and even took the advantage of the officer's turning his back to sign those articles without his knowledge, saying, they would run their chance. If any of the libellants should be found in this predicament, I shall not hesitate to dismiss their claim. Because no man ought to have an engagement forced upon him: mutual consent, expressed or implied, being necessary to every contract.

The *second* question is, Whether those who regularly signed the articles, or were duly enlisted by parole-agreement before the vessel's crew was complete, and against whom no breach of duty is
alleged,

alleged, but were turned on shore against their will, and did not go the cruise, should have shares of the prize taken in that cruise.

BUT this point hath been so fully established in favour of the libellants, in this court and in the court of appeals, that it cannot be controverted now. *

THE *third* question is, Whether parties under the circumstances last mentioned, being present, and suffering the marshal to sell and distribute after public notice given, any prize or prizes in which they might have claimed an interest, without filing their claim, or giving any notice to the marshal that they intend so to do, ought not to be deemed such a wilful neglect, either against the marshal, for not having reserved their shares, or against the captain, for omitting their names in the return of his crew?

IN clearing up this point, it may be allowed, that so long as property remains in the marshal's hands, subject to the disposal of the court, no length of time should bar a legal claimant from recovering his right.

THE practice is, for the marshal, after he has made sale of a prize, to advertise in the public papers for all persons having any claim therein, to appear by a certain day and receive their distributive shares. If, after that day, he should find any person's names in the list of the crew handed to him who have not appeared in person, or by agent, he makes report thereof to the judge, who, by virtue of a law of this state, will appoint an agent for such absent persons. After which distribution is made and the accounts closed, and lodged in the register's office.

Now, if any should think themselves injured by the return of the crew, inasmuch as their names have been omitted, and yet shall stand by and see the whole of the property distributed, without applying to the court or marshal for their shares, or giving any legal notice of their intention to make such a claim, it seems to be a reasonable conclusion that they have voluntarily abandoned their right. In the present case it is remarkable, that these very libellants brought their suit two years ago for shares in the *Glocester*, and recovered, and yet from that time to the present they instituted no claim for shares in the *Lady Margaret*, although this prize was, with respect to them, in the same predicament with the *Glocester*.

It is very true there is no statute of limitations in the admiralty, but all things must be limited by right reason. A strong argument *ab inconvenienti* may supply the place and have the force of a statute. For, if there are indeed no limits, how long shall the marshal wait for claimants to come in before he shall proceed to distribution? Or if, after those who are legally entitled have received their respective shares, they are to be forever liable to be called upon to refund, for the satisfaction of future latent claims, when shall they presume that what they have got is really their own? But no reasonable apology can be made for those who have knowingly suffered distribution to be made without making their claim.

BUT it hath been suggested, and is indeed within the view of the court, that some part of the monies arising from the sales of the Lady Margaret and her cargo, may yet be in the hands of the late marshal. If so, I have no doubt but that such of the libellants, as fall within the description of the *second* point or question above stated, are entitled to their respective distributive shares thereof.

By these principles I have examined the situations of the libellants respectively, which I have

carefully ascertained by the articles of enlistment, and the depositions exhibited. And I find, that Charles Marmet, Thomas Ashton, Patrick Kean, James Hamilton, Patrick M'Daniel, John Crawford, James Galloway, Patrick Mahoon, Peter Sherkes, William Cole, Edward Geiner, Enas M'Comer, Edward Crow, George Brand, James Murray, Benjamin Lewis, Philip Jordan, John Blaney, and Felix Hughes, are justly entitled. And thereupon I adjudge and decree, that they have and receive a landsman's share each from Matthew Clarkson, late marshal, of the monies that may remain in his hands, from the sales of the Lady Margaret and her cargo, or proportionable dividends thereof, in case there should not be sufficient to satisfy the whole.

AND further I adjudge, that the bill in this cause, so far as hath respect to the claims of James Barney, George Stanton Richard Fair, Charles Keasley, Joseph Ditz, and Daniel M'Farland, be dismissed.

AND lastly, I adjudge that the libellants pay the costs of this suit.

M'CULLOCH *versus* THE SHIP LETHÉ.

M'CULLOCH had shipped on board, the *Lethé*, in time of war, for a certain voyage from Philadelphia to Bourdeaux, and back again, at the wages of £.18 per month. The ship was detained long at Bourdeaux and whilst she was there, peace took place. The libellant performed the voyage, but was refused the wages on account of the peace, on a suggestion that the risk, which was the occasion of the high wages being removed, the libellant ought to have only customary peace wages from Bourdeaux to Philadelphia.

JUDGMENT, in favour of the libellant for wages agreeable to contract.*

* See page 122.

BRICE AND WOODROFF *versus* THE NANCY.

THE libellants entered on board the *Nancy* in January, 1783, and signed articles, according to custom, for a certain voyage to L'Orient, and back again to the port of Philadelphia. *Brice* engaged to serve in the capacity of first lieutenant, and *Woodroff*, as surgeon, to the ship, which was an armed letter of marque. By these articles *Brice* was to receive £.18 and *Woodroff* £17. per month. At this time it was war between Great Britain and the United States of America. The ship fell down the river in order to commence her voyage, but from various causes of delay, did not clear the Capes, so as to enter on the high seas, before the 20th of March following. In the mean time, viz. on the 3d of March, peace had taken place, and hostilities ceased between the belligerent powers.

WHEREUPON, it has been alledged in behalf of the respondents, that £.5 per month are the
customary

customary wages in time of peace, and a full recompence for services for navigating a ship; that all above that sum is allowed in consideration of the risk and dangers of war. That the consideration failing, and no risk being incurred, as peace had taken place before the ship had entered on the field of danger, the extraordinary wages ought to abate, and that the libellants ought to be content with peace wages for services done in time of peace.

ON the contrary, it has been urged, that the contract was duly and regularly made: that contracts are sacred things, and ought to be taken entire, and strictly construed: that contracting parties should not be admitted to explain their intentions afterwards, or recede from the terms, of their bargain, on account of future contingencies, provided there was no fraud in the case: that the performance of the voyage, and doing the duty on board, are the true consideration of the wages: that whether these wages are high or low is a matter that should have been considered when the contract was made: that as it cannot be supposed, that if the danger had been greatly increased by the arrival from an enemy's fleet on the coast, or from any other circumstance, the owners would have allowed increased wages, neither
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ought they to diminish the wages, because the danger happened to be lessened by the intervention of peace. And lastly, that the voyage was actually commenced when the ship left the port, although she remained long after in the river.

J U D G M E N T.

THE advanced wages above what is customary in time of peace is in consideration of the risk and dangers incident to war: in the present case it is clear that both parties, when they made the contract, had war in view, as is evident from the stations the libellants were to fill, viz. the one, that of first lieutenant, and the other, that of surgeon of the ship, offices unknown on board of merchantmen in time of peace. Whether it would indeed be peace or war, was a circumstance out of the reach of the parties to command. Peace, however, did take place, seventeen days before any risk whatever was incurred on account of the war.

THE case of insurance cited from 3d Burrow's, p. 1237, is a leading case in point. The contract there was regularly made between parties, more competent to be strictly bound than common mariners, viz. the owners of a ship and the un-
der-

der writers, and yet it was determined by all the judges, that this contract ought to be liberally construed; and that the insurance premium should be returned for such part of the voyage as had ran no risk.

THE cause lately decided in this court, M'Culloch versus Lethe, has been quoted; but there is a manifest and essential difference between that case and the present. In the former, the libellant had actually incurred the risk, had subjected himself to be killed in battle, or taken prisoner, which was the real consideration of the war wages promised; in the present case no risk from war was at all incurred: for, although much pains hath been taken to shew, that the captain and crew of the Nancy, not having heard of the peace, had sufficient reason to think that it was war when they sailed, and conducted themselves accordingly; yet the question is not, what might have been their apprehensions, but what was the reality of the danger, or whether it was indeed war or peace at the time?

HAD this vessel advanced into the scene of danger, though but for twenty-four hours before peace had taken effect, I should have no doubt in allowing the libellants their full wages, according
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ding to the articles, upon the same principles on which wages were decreed to M'Culloch.

THAT the common law doctrines respecting contracts do not apply in all their strictness to cases maritime is evident from the constant practice of this court. The enlistment of mariners have neither the complexion nor the formalities required by the rules of common law ; and it would be hard to bind men so ignorant as common mariners generally are, to the legal construction of terms , nor would it be for the interest of mariners, that articles should be so strictly construed, as the operation would probably be frequently much against them.

It appears, that when the libellants entered on board the Nancy, it was actual war, and that they held themselves in readiness to do the services, and encounter the dangers for which the stipulated wages had been promised. It was not their fault that the vessel did not forthwith proceed on her voyage. I see therefore no reason against their being allowed full wages for that period, and the common usage is to allow mariners their wages from the time of signing the articles, let the vessel fail when she may.

I adjudge that the libellants have and receive
their

their full wages, according to contract, from the time of signing the articles, to the 3d of March last; and that they receive customary peace-wages from the said 3d of March, to the completion of the voyage.

SHAW *versus* THE LETHE.

THOMAS Shaw, the libellant, entered on board the ship *Lethe*, as surgeon, and contracted to serve in that capacity from Philadelphia to Bourdeaux, and back again, for the wages of £.15 per month. It was then war, and so continued till the vessel arrived at Bourdeaux: whilst she was there in port peace took place. The libellant continued on board, and returned with the vessel to Philadelphia, and now demands the stipulated wages of £.15 per month, notwithstanding the peace.

MUCH has been said respecting the entirety of contracts on the one hand, and the divisibility of
of

of contracts, particularly those of insurance and mercantile agreements, on the other.

It has been urged for the libellant, that the voyage to Bourdeaux and back again, must be considered as one entire voyage; and that if this vessel had been insured, or chartered, there could have been no apportionment of the premium or hire on account of the peace.

AGAINST this doctrine, the case of *Stephenson versus Snow*, 3d Bur. 1237, has been cited, and fully considered. The case was—a ship was insured for a certain premium, to sail from London to Halifax; the insured warranting that she should sail with convoy from Portsmouth. She arrived at Portsmouth, but the convoy was gone. Whereupon a return of premium was demanded, deducting only the customary insurance from London to Portsmouth. The entirety of contracts was here urged against the insurers, but over-ruled by the whole court, who considered the contract as divisible, and having reference to two distinct voyages, viz. from London to Portsmouth, and from thence to Halifax; and determined that as the risk of the second voyage had never been begun, the premium for that had never insured.

THIS

THIS case appeared at first view to apply closely to the present ; but, on a nearer inspection, I find that the warrantee to sail with convoy was the ground of that decision. It was that alone which rendered the voyage divisible, because it was of the essence of the contract. Had the ship failed without, and been lost, the insurers would not have been answerable. Had she been insured from London to Halifax, without any condition annexed, and had stopped in her way at Portsmouth, and proceeded no further, the voyage would not, I apprehend, have been deemed divisible on that account, nor the premium apportioned ; so that the warrantee to sail with convey was the foundation of the contract, which failing, the contract failed, so far as the same had respect thereto. The voyage from London to Portsmouth seems to be no more than a necessary passage to the place where the substantial part of the contract was to take effect ; where the premium was to be earned by the commencement of the risk under the condition specified.

BUT I find nothing parallel with this in the articles of the ship *Lethe* : no contingency mentioned ; but only a simple contract for a voyage to *Bordeaux* and back again, in consideration of certain services

services to be performed on the one part, and certain wages to be paid on the other. If there is any similarity in the two cases, it consists in this: that, as in the one, the sailing with convoy was the ground of the *quantum* of the premium; so in the other, the war was the ground of the *quantum* of wages. In the case referred to, the contingency was fully recognized in the contract: the ship was warranted to sail with convoy, but no contingencies are provided for in the Lethe's articles. If the insured vessel had sailed with the convoy, though but for one day, and returned, it cannot be supposed that any part of the premium would have been restored.

THAT the mere arrival of a vessel at a port or ports cannot be construed as a division of the voyage delineated by the articles, is manifest from a current of law and practice: so it was determined in the case of *Bernon versus Woodbridge, Douglas, 753*, and numberless charter parties, insurances, and articles for mariner's wages have reference to circuitous voyages. Nor was it understood, that a fortuitous increase or diminution of the risk, or any alteration of circumstances between one port of destination and another, would affect the contract, unless provided for by the terms of the agreement.

BUT

BUT it hath been strongly urged, that the high wages promised, and the nature of the service to be performed, have reference to war only; and that as peace took place whilst the vessel was safe in port, the voyage, from the manifest object of the contract, became divisible: and that it would be very hard to bind the master or owners to the most severe construction of the articles, and make them pay for services, which, from an unforeseen change of affairs, were rendered impracticable.

ALTHOUGH there is an equitable force in this argument, yet, under the circumstances of the case, there seems to have been an obvious duty on the part of the master to have entitled him to an equitable relief from the binding force of the articles. He should have proposed to pay off the crew at Bourdeaux, and tendered a new contract on peace establishment, protesting against the former articles. Nor is this a mere ceremony, but what substantial justice seems to require. The mariners, under the articles, could not leave the ship without incurring a penalty. If then they are detained on board without any explanation, notwithstanding the great change of circumstances, they had sufficient reason to conclude, that they were continued in the service upon the terms of

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the

the subsisting contract : and this reasoning will well apply if the case be reversed. Suppose the mariner had engaged in time of peace, and war had broke out during the voyage, and he had made no declaration that he was dissatisfied with the terms of his contract, or expected war wages in consideration of the risk he was to run, I believe there are few masters of vessels who would not urge his silence as an acquiescence in the continuation of the contract, and bind him down to the terms of the original contract.

It is so natural to expect some declaration of the will of contracting parties, when circumstances out of the reach of either have occurred, which totally alters the principles upon which the contract was formed, that an omission of such declaration can have no other interpretation, but that of wilful neglect or deep design, neither of which is the law disposed to countenance. Hence, probably, arose the custom of protests, in cases of wreck, illegal capture, fire, and other unforeseen and unavoidable accidents.

ONE other argument hath been urged for the respondents, viz. that freight is the mother of wages ; inferring, that as this vessel received only
peace

peace freight from Bourdeaux to Philadelphia, no more than peace wages ought to be allowed for that part of the voyage.

It does not appear in testimony what freight this vessel received : but if it did, I see no force in the argument. There is, in fact, no connexion between freight and the quantum of wages : nor are the mariners ever privy to the terms on which a cargo hath been shipped. It is only a law of policy which arbitrarily makes the payment (not the rate per month) of the wages to depend on the safe conduct of the cargo, in order to induce the mariners to exert themselves in case of wreck, to save as much as possible, knowing, that if the whole be lost, they must lose the whole of their wages. If the freight is thus called the mother, the service performed may well be deemed the father, of the mariner's wages, that being the real and legal consideration. There is no doubt but the mariner shall have his wages, in cases where no freight at all is received ; as in vessels sailing with ballast only, which often happens. The truth is, the mariner's lien is on the ship, and not on the cargo. Nor, was it ever known, that freight could be attached in the merchant's hands to answer for mariner's

wages, but the ship is liable under all circumstances.

I have not noticed the ship's going to Teneriffe from Bourdeaux before she came to Philadelphia, as this circumstance, if it has any operation at all, must be against the master, who ought not to benefit by his own deviation from the articles.

AFTER mature consideration, I cannot find sufficient reason to give a different decision now, from what was lately given in the case of M'Culloch, against the same ship. The continuation of the libellant on board, after it was known that peace had taken place, without any declaration of the master, that he expected the terms of the contract should be changed, is too strong a circumstance to be got over.

BUT, as I think it a hard case, I would recommend an appeal; that the law and arguments may be again considered by another court.

J U D G M E N T.

THAT the libellant receive wages agreeably to the contract; and that he pay one half, and the respondent the other half of the costs of suit.

N. B. An appeal—and the court of appeals confirmed the above sentence; and gave the appellee costs of suit, and interest on his wages, from the date of the decree in the admiralty.

(1784.)

D R A Y, & A L.

versus

T H E C O L L I E R.

THIS vessel was attached under an act of assembly, allowing persons concerned in building, repairing, fitting out, and furnishing vessels for a voyage, to sue in the admiralty, as mariners sue for wages—passed the 27th of March, 1784.

THE bill was dismissed, and the libellant adjudged to pay costs, on account of the badness and insufficiency of the work done.

SILAS TALBOT

versus

THE OWNERS OF THE BRIGS ACHILLES, PATTY,
AND HIBERNIA.

IN September, 1779, Silas Talbot, being on a cruise in the sloop Argo, discovered, and pursued the brig Betsey, a British letter of marque, about 200 tons burthen, armed with 8 six pounders, and laden with 214 puncheons of rum, and one quarter cask, and bound from Montserrat or St. Christopher's, to New York, then in the possession of the enemy. After an engagement of two hours, Talbot captured the Betsey; put one West on board, as prize master, together with eleven of his crew, with written orders to the prize master to take her into the port of New London, then not far distant, for condemnation.

THE next day after the capture, the three brigs, Achilles, Patty, and Hibernia, belonging to the respondents in this cause, came up with the Betsey,
under

under British colours. Captain Talbot taking them for enemies, was obliged to leave his prize, and fly : whereupon one of the three brigs chased the Argo, whilst the Patty fired upon, boarded, and captured the Betsey.

WEST, the prize master, finding them to be Americans, declared that the Betsey was a prize of captain Talbot, in the Argo, then in fight, and shewed Talbot's written orders to him : but for fear of their claiming shares of the prize, as having been in fight when she was captured, asserted, that she had been taken three days before. The persons who boarded the Betsey having seen a battle the day before, between a brig and a sloop, which they believed to be the same ; and observing that the number of men on board, corresponded with the number registered in her British papers, concluded that no credit should be given to West's declaration. Whereupon, a consultation was held by the three captains,* who finally made prize of the Betsey, took out all the Argo's men, except one negro, and putting their own people on board, ordered her for Philadelphia. But she was soon after captured by a British cruiser,

* According to W—— D——'s deposition.

and carried into New York—and so lost to all parties. The three brigs pursued their respective voyages; taking the Argo's men with them, whom they left in Spain, and other remote parts.

THE respondents have rested their defence on two grounds of argument: *First*, they alledge, that they have produced sufficient testimony to prove that the brigs Achilles, Patty, and Hibernia, were within sight, when the Argo engaged and captured the Betsey, and acquired thereby a property in the prize, according to the maritime law: inferring, that as their interest in the booty was much greater than that of the Argo, they being three to one, they had a right to order the prize where they judged best for their security and benefit; more especially as they had reason to doubt the fidelity of West, in whose possession they found her, on account of the falshood he had told them: concluding, that if any injury was done to the libellant, it only amounted to his proportionable share of the booty, for which alone they ought to be answerable. *Secondly*, that many suspicious circumstances on board the Betsey—such as the British papers, the number of men on board agreeing therewith, and the declaration of West, that she had been captured three days before,

fore, contrary to their own observation, were sufficient to induce them to conclude that the whole was an artifice ; and, therefore, they were justifiable in taking her as original prize, and to consider themselves as the first captors.

THESE two positions of defence are supported by the testimony of W—— D——, a passenger on board the Patty. This deposition, on which alone the respondents have relied, labours for the establishment of two facts which are altogether incompatible with each other, viz. first, that the three brigs saw the Argo engage and capture the Betsy ; and, secondly, that the Betsy had not been captured at all, or, at least, that the captains of the three brigs had good reason to think so, and were justifiable in taking her as original prize. One only of these positions can be true : therefore, a testimony which labours to establish both, may, at least, be said to prove too much.

THE fact best supported by the circumstances seems to be, that the three brigs were in sight of the battle between the Argo and Betsy. What then was their conduct in this point of view ? The next day after the engagement, of which
they

they had been distant spectators, they come up under British colours; they find the Betsy in the possession, and under the protection of the Argo, her captor; they chase away the Argo, and fire on the prize under British colours; they board her; take out all the people placed on board by captain Talbot; man her with part of their own crews; give her in charge to their own prize-master, and order her for Philadelphia. Could their having been in sight, the day before, of the engagement between the Argo and the Betsy, justify such a procedure? Surely it could not. Besides, it is manifest, that the rule of law respecting vessels in sight of a capture does not refer to what may have been seen by the claimants, but by people on board the prize: for the rule is founded on a presumption, that the crew of the captured vessel, seeing others coming up armed and prepared for battle, were thereby induced to surrender.

FURTHER, I can on no account admit the doctrine, now for the first time advanced, and unsupported by any authority whatever, that captains, claiming a share in the prize they may have seen captured, have a right to order the booty where they please, by vi.tue of a majority of votes, or
of

of their superior interest in the captured property. Their claim must follow, and depend upon the success of the real captor. Besides, in the present case, the libellant who fought for, and alone took the brig Betsey, had at least some right in the prize: the captains of the three brigs therefore, ought in justice, to have left his prize-master on board to prosecute the Argo's claim, which was not done.

UPON the whole, this seems to have been an act of such unjustifiable violence and wrong, on the part of the brigs Achilles, Patty, and Hibernia, that I am clear in deciding in favour of the libellant in this cause. And, having carefully ascertained the value of the property lost, I find that a brig of 200 tons, mounting eight six-pounders, with her tackel, apparel, furniture, and provisions on board, was, in October 1779, worth

	£ 3,500 0 0
214 puncheons of rum, averaging	
100 gallons each, at 10/6 per	
gallon,	10,700 0 0
1 quarter-cask, 25 gallons,	12 10 0
	£.14,212 10 0
	£.14,212 10 0

Total

Total,	£ 14,212 10 0
But as the brig Betsey had not yet arrived in port, and allowance should be made for the risk she had to run, which appears to be worth 10 per cent. insurance, amounting to	1421 5 0
Which being deducted, leaves	<u>£.12,791 5 0</u>

JUDGMENT in favour of the libellant for £.12,791 5 0, with costs of suit.*

* No discrimination was, in this cause, attempted to be made between the three captains of the brigs Achilles, Patty, and Hibernia: the principal facts were attributed to all, and the judgment was general against the respondents.

THE cause was carried by appeal, to the court of appeals in prize causes established by congress; but the judges rejected the cause, conceiving it to be a suit between citizen and citizen for damages merely, and therefore not within their jurisdiction. The court was soon afterwards dissolved on account of the peace. The appellants then removed their cause to the high court of errors and appeals for the commonwealth of Pennsylvania, where, after long arguments, as well respecting the jurisdiction, as on the merits, a decree passed in favour of Silas Talbot for £.11,141 5 4, with costs.

D E A N, AND OTHERS,

versus

JOHN ANGUS CAPTAIN OF THE HIBERNIA

Judgment on a Plea to the Jurisdiction of the Admiralty.

IN a former suit in this court, *Silas Tabot* libelled and recovered against Deans, Purviance, and Harbefon, as owners of the brigantine *Hibernia*, and also against certain other persons, respondents in that cause, for a wrongful capture on the high seas. From the decree in that cause, an appeal was made to the high court of errors and appeals for this commonwealth, where a judgement was finally obtained against the said respondents, to a considerable amount. And now, Dean Purviance, and Harbefon, owners of the *Hibernia* libel against John Angus, their captain, for satisfaction of the damages they have sustained, in consequence of the wrongful capture he had made.

To

To this libel, *Angus* hath filed for answer, a denial of the wrong done, and a plea to the jurisdiction of this court in the present cause: “ For
 “ this, viz. that the contract between the said li-
 “ bellants, and him the said *Angus*, and also the
 “ damage alledged to be sustained by the said li-
 “ bellants, if any there be, arose upon the land,
 “ to wit, in Philadelphia, in the county of Phi-
 “ delphia.”

THREE acknowledged principles of law naturally present for the solution of the present question.

1st. WHERE the original cause of action is *exclusively* of admiralty, or *exclusively* of common law jurisdiction, all incidental matters necessarily flowing from or dependant upon the first cause of action, shall follow the original jurisdiction, whatever the complexion of those matters, separately considered, may be.

2dly. WHERE the original cause of action is partly of common law, and partly of admiralty jurisdiction, the common law shall be preferred.

3dly. WHERE the jurisdictions are concurrent, the suit may be determined in either.

To one or other of these principles must the present case apply : to ascertain the jurisdiction by which it is to be tried, and the propriety of the application depends upon this sole question, What is the original cause of action in this suit ?

IT is alledged in support of the plea, that this is a *new* action between the owners of a vessel and their captain, and hath no necessary connexion with the suit brought by Silas Talbot: that it is enough, if the respondent shews that the decree past against the libellants, not as principals in the wrongful capture, but solely on account of the maritime law, which makes owners answerable for the misconduct of the captains they employ ; and therefore their connexion with Angus, as captain of the *Hibernia*, must be considered as the true cause of the damage they say they have sustained, and the source from which the present suit originates. And so infer, that as this connexion is grounded on a contract express or implied, made upon land, the original cause of action must, from its nature and locality, be *exclusively* of common law jurisdiction.

THE two criterions of exclusive jurisdiction are, the *subject matter*, and the *locality* of the transaction.

IT is not doubted, but that the question, *prize or no prize?* when it is the foundation of a suit, is *exclusively* of admiralty cognizance from the *subject matter*. The authorities to this point are too precise to admit of doubt. But some of these authorities go further; and say, that the mere taking *as prize*, and all matters dependant thereupon, are also peculiarly of admiralty jurisdiction. *Ld. Ch. Jus. Lee's* opinion, in the case of *Rous versus Hafsard*, as cited by Lord Mansfield, and again cited by justice Willis, in the case of *Le. Caux versus Eden*. *Douglafs*, 581, is full to this purpose. “The great question was, Whether an action for
 “trespass would lie for taking a ship as a prize?
 “Lord chief justice *Lee*, having called in two
 “civilians to his assistance, delivered the opinion
 “of the court. That though, for taking a ship
 “on the seas, trespass would lie at common law,
 “yet when it was taken *as prize*, though ta-
 “ken wrongfully, though it were acquitted, and
 “though *there was no colour for* the taking, the
 “judge of the admiralty was judge of the dama-
 “ges and costs, as well as of the principal mat-
 “ter: and he laid it down as law, that, if such an
 “action was brought in England, and the defen-
 “dant *not guilty*, the plaintiff could not recover.”

IT is clear by this authority, that in order to fix the admiralty jurisdiction, it is not necessary that the question before the court should precisely be, *prize or no prize?* but that a suit for costs and damages may and must be brought in the admiralty for a taking *as prize*, though wrongfully done, and even without any colour for such taking, and, as it should seem from the case, even though the property so taken should not be in the possession of the court.

So also, in the case of *Lindo versus Rodney and Vaughan* (Douglafs, 592.) Lord Mansfield, in giving the opinion of the court, says: “ A thing
 “ being done upon the high seas, does not exclude
 “ the jurisdiction of the common law; for seizing,
 “ stopping, or taking a ship upon the high seas,
 “ *not as prize*, an action will lie, but for taking
 “ *as prize*, no action will lie. The nature of the
 “ question excludes not the locality.” And a little further on—“ The end of prize-court is
 “ to suspend the property till condemnation, *and*
 “ *to punish every sort of misbehaviour in the captors.*”

How it came to pass that the case of *Silas Talbot* was, by the court of errors and appeals, and still is, by concession of council in the present cause,

cause, considered to be *not* of admiralty jurisdiction on account of the *subject matter*, I am at a loss to conceive; especially when I look at the two only points of defence taken in that cause, viz. first, that from the papers found on board the captured vessel, and from other concomitant circumstances, there was a reasonable colour for *taking as original prize*. And, secondly, that if the *Betsy* was indeed prize to Silas Talbot, the three brigs were in sight at the time of the capture, and by the maritime law, acquired thereby an interest in the property. I say, these pleas, together with the current of the testimony then exhibited, and the time of the transaction, being time of war, all united in fixing that cause within the admiralty jurisdiction, from the *subject matter*, and the very nature of the case.

It is in obedience to strong conviction that I thus venture to differ in opinion from the judgment of the honourable court of errors and appeals: a judgment which I am inclined to believe would not have taken place, but for the peculiar situation of Talbot's cause. The court of appeals for the United States, in prize-causes, had rejected the appeal, because the

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question

question was not strictly, *prize or no prize?* but an action for damages between citizen and citizen. That court, as I have understood, looked at that cause in no other point of view, and therefore refused to take cognizance of it, and soon after was dissolved. The appeal was then carried to the high court of errors and appeals for this commonwealth. Here the proctors had made a previous agreement, not to contest the point of jurisdiction; and so the cause came before the judges on the merits only, and the court proceeded to sentence without suspecting their jurisdiction. After sentence, however, some of the judges began to entertain scruples respecting the jurisdiction of the court; and, on enquiry, found that the jurisdiction had only been submitted to by consent. The court well knew that consent could not give legal jurisdiction; and thereupon retracted or suspended the sentence until an argument should be held on that point: and the question of jurisdiction was again agitated. In the mean time, that is between the rejection of the cause by the court of appeals for the United States, and its introduction into the court of the commonwealth, the case of *Le Caux versus Eden*, as reported by Douglass, with Lord Mansfield's dissertation on admiralty jurisdiction subjoined, made

their first appearance amongst us, and furnished new ideas respecting the court of admiralty. Then, for the first time, did the distinction occur, between the *prize-court* and the *instance* court of admiralty. Possessed of this idea, the judges of appeal for the state, looked at the proceedings which the court of admiralty had adopted in the case before them, and found they had been *in personam*, by attachment, to answer for damages arising from a tort committed at sea. This, it was observed, was never the practice in the *prize-court*, which always proceeded *in rem*, by proclamation and monition, whether the property be in fact in the possession of the court or not: and so it was in the case of the king versus Broom, *Carth.* 398. by proclamation at the Royal Exchange, although the prize taken had been previously sold at Barbadoes. And for this error of form in the admiralty, *Talbot's* case was considered as belonging to the *instance-court*. The judges of appeal considered themselves as an *instance-court* of appeal, and so proceeded to the definitive decree.

HAD the court of admiralty, when Talbot's cause first made its appearance there, been possessed of the light which hath been since thrown up-
on

on this subject, it is very probable that the process would have been conducted otherwise than it was. It should be observed, however, that an *exclusive* jurisdiction cannot be subverted by an erroneous process.

How far the consideration, that if the court of appeals for the commonwealth should reject Talbot's cause (as the court for the United States had done) the appellants would have had no other resource, and so have been deprived of the benefit of an appeal altogether, might have operated to induce the judges to take that within their cognizance as an *instance*-court, I will not presume to say; but the peculiar circumstances of the case ought to be remembered: and I have mentioned them on this occasion from a sense of the duty I owe to the jurisdiction entrusted to my care.

I come now to consider the origin of the cause now before me, and whether it is, or is not, necessarily dependant upon, and consequential to, the case of Silas Talbot.

It has been said, that this suit is derived from three circumstances, viz. the contract by which Angus was made captain of the Hibernia, the wrongful taking at sea, and the damages the li-

bellants have been obliged to pay in consequence of this contract and wrongful taking. And it has been urged, that as two of these circumstances viz. the contract and the payment of damages, happened on the land, the common law, by the second general rule, hath the exclusive jurisdiction.

It appears to me, however, that owners are answerable for torts done by the captains they employ, under a general principle of law, and not by virtue of any special contract whatever. No such responsibility can be deduced from any articles, or sailing orders given to captains of vessels. The contract may be the ground of an action of damages for a breach of orders, respecting the particular interests of the owners; but in cases of tort the owners are answerable by a general law. The libellants have been obliged to pay the damages in Talbot's case, not because they employed captain Angus, but because they were owners of the brigs.

NEITHER can I consider the payment of monies, according to the decree in favour of Silas Talbot, as the origin of the present suit. We should not stop short in the train of causes. In such a train, every circumstance is the effect of the preceding and the cause of the subsequent link. No decree
would

would have past, no damages have been paid, nor would the present suit have been instituted, but for the original wrong done at sea. To this wrong, therefore, we must have recourse for the source of the present action.

SOME pains have been taken to apply the case of ransom bills, charter parties, and policies of insurance, all sueable at common law, to the present suit. A ransom bill supposes a divesture of property by the rights of war, and the bill is a promissory note for a certain sum, in consideration of the victor's relinquishing his right of conquest, and restoring the property. In a suit, therefore, on a ransom bill, the question of *prize or no prize* can only come in incidentally, to shew whether there was value received or not. For if the taking was wrongful, the property never divested, and of course the promissory bill was given without consideration. Charter parties, and policies of insurance, are written contracts, executed on land, respecting certain specific contingencies: it is immaterial where these contingencies shall happen. The suit is founded on the binding force of the contract, and the contingencies are only incidental circumstances, shewing that the force of the contract is to take place and operate. But these are not parallel with the case

before the court, wherein the libellants complain of damages they have sustained in consequence of a tort committed at sea by the captain they had employed.

WHEN the case of Silas Talbot came first before this court, the libel was filed in the name of Silas Talbot, *qui tam*, against the brigs Achilles, Patty, and Hibernia, and against certain persons in the said libel named, as owners and captains of the said brigs. All these persons (except two, if I rightly remember) appeared either in person or by proxy, and entered into stipulations, according to the practice of the court. In this form the suit commenced, and proceeded through the admiralty, and through the court of appeals. The question was general in both courts, viz. Whether there had been a wrong done? and if so, whether the parties who appeared as respondents to the libel, were answerable for the damage, and to what amount? And, finally, the decree was also general—That the appellants should pay to the appellee certain monies in recompence of the injury sustained. But how far any particular captain, or the owners of any particular vessel might have justified themselves by a separate defence, was never the subject of enquiry. No such specific justification having been proffered in either court. And whether it is, or is not

not now too late, to make discrimination, may be the subject of future discussion : but I mention this to shew, that the present libel rises out of Talbot's case, and that its pursuit will unavoidably force us up to the wrongful taking *as prize* for the origin of the present suit. Since then, I cannot but consider the case of Silas Talbot, as properly belonging to the *prize*-court of admiralty, and that the present suit originates from, and is a supplementary part of that transaction, I cannot (according to the first principle stated) but over-rule the present plea to the jurisdiction of this court.

I conclude with this observation—That in all pleas of this kind, where the law is doubtful, the leaning of the court will be in favour of its own jurisdiction—not from a desire of extending the admiralty cognizance, but for this consideration—That if the decision in favour of the jurisdiction should be erroneous, the doors of the common law are open for redress, and a prohibition may be obtained. But there is no remedy for the erroneous exclusion of parties who apply for the process of the admiralty, the benefit of the laws by which it is governed, and the summary justice it affords.

May, 1785.

DEAN

D E A N, A N D O T H E R S,

versus

J O H N A N G U S.

J U D G M E N T O N T H E M E R I T S.

THE bill filed in this case states, “ That John Angus, being commander of the brig *Hibernia*, belonging to Joseph Dean and others, did, on a certain day, without any licence, order, or authority, from his owners, and without any probable cause of capture, with a view to his own private interest and emolument, combine and confederate with certain malefactors, and did pursue and take the brigantine *Betsy*, then in the possession of Silas Talbot, commander of the sloop *Argo*, as lawful prize and booty of war. And that the said John Angus, not being ignorant of the premises aforesaid, but well knowing the same, and intending to deprive the said Silas Talbot of his prize, and to defraud and injure, as much as in
him

him lay, his owners, the libellants in this cause, did cause the brigantine Betsey to be sent to places unknown, &c. whereby she was lost, &c.”—

“ That for this cause, the said Silas Talbot did afterwards file his bill in this court against the said John Angus, and against his owners, the present libellants, and also against certain other persons, in the said bill named, for the wrong and injury done ; and did, by the sentence and decree of this court, recover against them the sum of £. 12,700:5:0 damages, with costs of suit. Whereupon, an appeal was entered to the honourable the high court of errors and appeals for this commonwealth ; in the prosecution and final issue whereof, the said Silas Talbot did recover against the appellants the sum of £. 11,141:5:4 ; of which sum the libellants in this cause were compelled, and did actually pay, the sum of £. 4000 : and also that they had expended the further sum of £. 450, in defending themselves against the bill of the said Silas Talbot, and in the prosecution of their said appeal. Whereupon, they now pray judgment against the said John Angus, for reparation of the damage and loss they have so sustained.”

I have found it necessary to the determination of
the

the present question, to consider it under the three following points of view, viz.

First, How far the cause now before the court may be considered as connected with, or determined by the decree in the case of Silas Talbot.

Second, UNDER what circumstances owners of vessels ought to recover against the captains they employ for damages suffered in consequence of their misconduct.

Third, THE specific circumstances of the present case, as they stand on the testimony, or what is called the merits of the cause.

As to the first point—I can see no connection between this cause, and the case of Silas Talbot, further than this; that as it originates in the same transaction, viz. *a taking as prize on the high seas*, the jurisdiction is thereby determined. In all other respects the two causes proceed on different principles—The points in view in Talbot's case were—how far owners of vessels were answerable for torts committed by the captains they employ? and whether the *taking* in question was in fact such a tort as they ought to be answerable for? The objects in the present case are—Under what circumstances

stances owners may recover against their captains, and whether captain Angus was, or was not, *particeps criminis* with the wrong doers in Talbot's case.

THE complexion of the two causes being thus manifestly different, it cannot, with any reason, be admitted, that the testimony or decree, founded thereupon in the former, should be conclusive in the present case. The decree, in Talbot's case, was against certain persons, who by stipulations, had made themselves responsible for the issue of that suit on general principles. It is not inconsistent with the record of that decree, for captain Angus, who was not one of those stipulants, and who was no party in that suit, to come in now and make his defence, when personally called upon to answer, and to shew that he was not one of the wrong doers, *against whom* that decree was obtained.

ON the second point, viz.—Under what circumstances owners of vessels ought to recover against the captains they employ, for damages suffered in consequence of their misconduct? It is consonant with reason and authority, that captains are not answerable for losses arising from unavoidable accidents,

cidents, mere errors of judgment, or failure of success, after having exercised all reasonable diligence and discretion. It would be very difficult, and at present unnecessary to delineate the particular circumstances and kinds of misconduct, which should render a captain responsible to his owners. Every case that occurs must be judged of, by its own peculiar circumstances. The present libel states, "That John Angus did, without any authority from his owners, combine with certain malefactors, and without probable cause of capture, take the brig *Betsy*, then in the possession of Silas Talbot, as prize and booty of war: and that he did this, not ignorantly, but well knowing the circumstances, and with a view to injure the said Silas Talbot, and also his owners, as much as in him lay." If these charges are supported by testimony now before the court, there can be no doubt, but that he ought to be answerable to his owners for whatever they have suffered by his misconduct.

AND this leads to the third point, viz.—The consideration of the specific circumstances of the case, as exhibited by the testimony, or the merits of the cause.

THE facts, so far as they respect captain Angus, appear to be in substance these :

ANGUS failed on a trading voyage from Philadelphia to Teneriffe, in the armed letter of marque brig, *Hibernia*, in company with the brigs *Patty* and *Achilles*, also letters of marque, and bound to some ports in Europe, under the commands of captains *Prole* and *Thompson*. Angus had received written instructions from his owners (the present libellants) to keep company with the two brigs as long as he should think it prudent, and had their approbation to cruise with them on the coast for two or three weeks, if they should so agree. Being at Reedy Island, in the Delaware, a consultation was held between the three captains, and Prole was appointed commodore of this little squadron. Soon after they had got out to sea, they discovered a brig and a sloop at a distance. Prole, as commodore, gave orders to chase, which was done. Prole and Thompson, under British colours, came up with, and took the brig, but the *Hibernia*, being a dull sailer, was left four or five miles astern. When she came up, captain Angus enquired what the captured vessel was, and was informed by Prole, or Thompson, that she was a good prize, bound from Montserrat to New York. To which Angus replied, that if the brig was prize, the sloop (then in sight) must be
 so

fo too : and asked why one of their fast failing brigs did not purfue her ? To which it was answered, that they did not choofe to leave the prize till ſhe was well manned ; but ordered him to chafe the floop, which he accordingly did, for two or three leagues ; but finding he could not come up with her, he hawled his wind, and beat up again for the other brigs, but did not reach them till dark. Prole then ſent a boat to Angus, demanding two of his hands to man the prize, forwarding, at the ſame time, a paper for Angus to ſign, which appears to have been orders drawn up by Prole, and ſigned by him and Thompſon, for the prize-maſter, to whoſe charge they had committed the captured brig. Angus haſtily ſigned this paper on the binnacle, and ſent the two men required. The wind then blowing freſh, the ſea running high, and night coming on, the four brigs ſeparated and ſaw each other no more.

FROM this detail, it is manifeſt, that Angus had no opportunity of acquiring information of thoſe circumſtances which were the ground of condemnation againſt the reſpondents in the ſuit of Silas Talbot. The aſſurance of Prole, the commodore, that the Betſey was good prize, was, in the then ſituation of affairs, ſufficient to convince Angus that there was at leaſt probable cauſe of capture. And if the enterprize had been a ſucceſſful

cessful one, which he had no reason to doubt, Angus would not have been justifiable in neglecting any thing on his part to secure to his owners a share of the *Betsy* taken, or to add thereto, by endeavouring to take the sloop also.

THE only circumstance which hath a direct tendency to criminate captain Angus, is his signing the orders to the prize-master put on board the *Betsy*, directing to “keep to the southward, for fear of falling in with the *Argo* :” There are two ways in which this may very naturally be accounted for, neither of which are in the least contradicted by the testimony, viz, that in the hurry of the transaction, the boat waiting along side, the sea rough, and night coming on, he signed these orders without reading them, having confidence in those who had drawn them up and signed before him ; or, according to his last conclusion, “if the brig was prize, the sloop must be so too,” he still conceived the *Argo* to be an enemy, and therefore to be avoided by the prize-master.

BUT, without having recourse to surmises, I am clearly of opinion that the libel is not supported by the testimony ; that is, there is not sufficient proof that the respondent “did wilfully and knowingly, and without probable cause of capture, join
 I with

with others, in taking from Silas Talbot his prize and booty of war.”

It is manifest, indeed, from the records of the court of appeals, that the libellants have suffered considerable damage in consequence of this transaction at sea. But, as they had embarked themselves in a suit with real wrong-doers, and suffered judgment to go against them on general principles, without attempting any separate defence, this is no reason why Angus should not bring forward such specific testimony with regard to his own conduct as may exculpate him from the charges laid in the present libel.

SOME stress has been laid on a passage in the deposition of W—— D——, exhibited in Talbot's cause, tending to prove that Angus was not so ignorant of the circumstances respecting the Betsey and Argo, as he pretends. The passage is in these words: “Afterwards, captains Prole, Angus, and Thompson, in the presence of this deponent, consulted what they should do with the brig Betsey, and being of opinion,” &c. Whatever weight this deposition might have had in Talbot's cause, it is inadmissible in the present; but I would observe that this circumstance is not supported by any other testimony on the records of
this

this court : on the contrary, from the general history of the transaction, there seems to have been no period of time in which Angus could have left his vessel, or the other captains have been on board the Hibernia to hold this consultation ; W—— D—— must therefore have been mistaken. Indeed this is not the only circumstance in which he is singular. For just before, he says, “ The brigs Achilles and Hibernia endeavoured to speak her (meaning the Argo) but could not come up with her. And, upon the said Church’s saying, that captain Talbot was not a man that would run from *one* of them if they would not both chase, the brig Achilles then chased alone.”

Now, the whole current of testimony agrees in this, that it was the Hibernia and not the Achilles that chased the Argo. And as I remember, in some stage of Talbot’s suit, it was urged as an aggravating circumstance against the owners of the Hibernia, that their captain was employed in driving off the Argo, whilst her confederates were plundering her prize.

THESE observations on W—— D——’s deposition cannot directly affect the present question, because that deposition is not an exhibit in this cause ; but I mention them, because if I could find

any substantial ground that Angus was indeed *particeps criminis* with Prole and Thompson, or that he knew, or had any opportunity of knowing, the circumstances which should have prohibited them from making that unfortunate capture, I should not be so clear as I now am in adjudging

THAT the bill in this cause be dismissed, and that the libellants pay the costs of suit.

THE libellants ; appealed and after long argument, the court adjudged in June 1785, that John Angus should pay to the appellants, £.948:15:10, with interest thereon, from the 22d day of January 1785.

LIEBART, BAES, DURDEYN, & Co.

versus

THE SHIP EMPEROR.

THIS is a suit brought on a bottomry bond, given by John Walsh to the libellants at Ostend, whereby he hypothecates the ship Emperor, of which he was then the captain, for 4500 florins, equal to £.409:1:9 sterling money of Great Britain, advanced for repairs of the said ship. Whereupon James Oellers, the owner of this ship, and others, his assignees, come in, and answer to the libel, alledging that this bottomry bond ought not to take effect *as an hypothecation according to the maritime law.*

THE power vested in a master of a vessel to impawn his owners ship or goods for necessaries furnished in a foreign port, is a legal indulgence, founded on the urgency of the case, and is for the general benefit of commerce.

THERE are few rules of law more strictly defined than this of hypothecation, and none in which the reason and intention of the law are more manifest : it is thus delineated.

“ A master of a ship hath no power to take up money by bottomry, in places where his owner or owners dwell.” “ But when a master is out of the country, and where he hath no owners, nor any goods of theirs, nor of his own, and cannot find means to take up by exchange, or otherwise, and that for want of money the voyage might be retarded or overthrown, monies may be taken up upon bottomry.”—*Molloy*, book II. chap. ii. sect. 11.”
—“ And the money so taken up by the master, is done upon great extremity, and that for the completing of the voyage, when they are in distress and want, in some foreign parts.”—Sect. 12.

ALL the books agree in the spirit of this doctrine. The extreme necessity appears every where to be the *reason* of the law, and the *intention* to favour commerce. Let us now take a view of the present case. The leading facts appear from the testimony exhibited, to be these :

THE ship *Emperor*, John Walsh master, belonging to James Oellers, of Philadelphia, failed for
Ostend,

Ostend, with a cargo of tobacco on board: the ship and cargo being consigned by the owner to *Bine, Overman and Company*, merchants at *Ostend*. During the voyage the vessel was so much damaged by a storm at sea, that the captain was obliged to put into Dover in England, in distress. From Dover, the captain sent immediate notice of his situation to the consignees at Ostend, and they speedily furnished him with a credit on London, by which he raised money sufficient to refit the ship. After this he sailed from Dover, and arrived at Ostend, where the consignees took charge of the ship and cargo.

BEFORE the vessel arrived at Ostend, *Bine, Overman, and Co.* had accepted bills to a considerable amount, drawn upon them by *Oellers*, on the credit of this consignment. Upon closing all accounts, *Bine, Overman, and Co.* found that *Oellers* had not only drawn upon them to the full amount of the cargo and freight, (“the tobacco not selling so well as was expected”) but that there remained a considerable ballance in their favour. To secure this ballance, they tell captain Walsh that he shall not leave the port, unless he will repay them the monies advanced at Dover for repairs, or hypothecate the ship. It was not in captain Walsh’s power to do the one, that is, to repay

the money, and he declined the other proposal for some time: but finding expences accumulating, and that he could not fail without some accommodation, he at last consented to hypothecate the ship. Bine, Overman, and Co. then recommended him to *Liebart, Baes, Durdeyn and Co.* telling him that they would lend money on bottomry; and conducted him to their house, where he executed the bottomry bond now in question. But no money was paid to Walsh; for the bills for repairs at Dover had been long since discharged by the produce of the credit on London.

AFTER this, Bine, Overman, and Co. permitted captain Walsh to fail, and in due time he arrived at Philadelphia.

DURING these transactions, Oellers had failed, and assigned this ship to his creditors; and the question now is—Whether this bottomry bond shall operate to the exclusive security of the merchant's at Ostend, against all other creditors, as a genuine hypothecation would do, on the principles of the maritime law?

AFTER a careful consideration of the circumstances of the case, I cannot discover one real feature of that rule of law which should be the ground
of

of the present suit. True it is, that the ship was in necessity, and so is every ship that wants essential repairs. But the owner had credit within reach. The consignees were not far distant. The application was easy and certain, and the consignees no sooner heard of the disaster, but they furnished the means of relief. In fact, Bine, Overman, and Co. had the strongest inducement to exert themselves in getting the ship repaired at Dover, that she might get round to Ostend; for they had made themselves answerable for Oellers's bills upon the credit of this cargo. It was, therefore, of importance to them, that the cargo should arrive safe to their hands: So that instead of advancing money to a distressed stranger, they were only taking care of their own security. This motive is manifest by their letter to Walsh at Dover; and still further by their subsequent conduct: for after they had disposed of the cargo, and found a ballance due from Oellers to them, they insist that Walsh shall not sail, unless he will hypothecate the ship to Liebart, Baes, Durdeyn, and Co. which from all appearances seems to be the same thing as hypothecating her to themselves: for the captain received no money from Liebart, Baes, Durdeyn, and Co. who were not at all interested in the transaction, and whose names were only made use of to
save

save appearances. For Bine, Overman, and Co. well knew, that being consignees, the captain had no power to hypothecate the vessel to them. And, in order to give the bottomry bond the face of a genuine hypothecation, they selected from the general account, the monies spent for repairs at Dover, and compelled the captain to hypothecate his ship, *as for those particular charges*, to the libellants, who had not advanced one shilling towards that expence.

FURTHER, if we look into the accounts, we shall find, that, although this voyage was not a very successful one, yet the ship cleared all charges accrued after she failed from Philadelphia, even including the repairs at Dover. But Oellers had drawn upon Bine, Overman, and Co. on the credit of the future voyage, long before the ship failed from Philadelphia, to raise money to fit her out; and it is these drafts brought into account which make a ballance due to the consignees. So that, instead of an hypothecation made to enable a ship to complete her voyage, it was, in fact, made to enable her owners to begin one; which was never the object of the maritime law in cases of hypothecation. Neither was this law ever designed to give partial advantages in mercantile connections, or secure the ballance of a running account

count

count between owners and consignees, to the exclusion of other creditors.

THE importance of the present decision to the commercial character of our country, has been strongly urged in favour of the libellants. But I am not apprehensive on this account. The question in view is not to be determined by any municipal law of the country, but by a general law, universally received and understood. And I am of opinion, that our national character would be much more likely to suffer by an adjudged precedent, which might open a door for dangerous collusions, by putting it in the power of captains of vessels to saddle their owners with unnecessary obligations, or to give an unfair advantage to foreign creditors, by a fraudulent use of that pre-eminent lien which the law lays on a ship and goods, properly hypothecated.

I do not mean to insinuate that there has been any fraud or collusion in the present case. It is enough, that I do not find the claim of the libellants within the spirit or intention of the maritime law : and, therefore, I adjudge,

THAT the bill be dismissed, and that the libellants pay the costs of suit.

FROM

FROM this decision there was an appeal to the high court of errors and appeals. The cause was again argued there, but the judgment of the court of admiralty was confirmed.

THE following notes, taken at the time, contain the substance of the judgment given in the high court of errors and appeals in the above cause.

THE court observed, that the power of a master to hypothecate his owner's ship, was a necessary, but sometimes a dangerous power—the court was unwilling to extend this power farther than the law strictly authorized—a genuine hypothecation ought to be the *voluntary* act of the master, at the time when, and in the places where, the monies were advanced for necessaries or repairs—the money advanced, ought to be solely on the faith of the hypothecation, and not on any personal credit—these are incontrovertible principles—the present case not applicable to them—although the hypothecation was made to Liebart, Baes, Durdelyn, and Co. yet it was to secure monies advanced by Bine, Overman, and Co. the consignees—No authority shewn, and no authority can be shewn, because none ought to be, that an hypothecation can be made to a consignee. Great mischiefs might arise if captains could hypothecate

to consignees; no authority produced to prove that an hypothecation can be made in any port, but that in which a vessel first arrives after the distress and damage sustained. Bine, Overman, & Co. did not repair the vessel on the faith of the hypothecation; but this hypothecation was made to secure to consignees the balance of a running account.

THE court is unanimous in confirming the sentence of the admiralty.

T U R N B U L L, A N D . O T H E R S ,

versus.

T H E S H I P E N T E R P R I Z E .

THE bill in this cause is filed by certain merchants against the ship Enterprize, for the recoveries of monies advanced by them to the captain of the
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the said ship in the port of Philadelphia, to fit her out for an intended voyage. The ostensible or real owners, or some of them, being at the time of such advancements within the state, and known to the libellants.

AND it has been urged in support of the libel, that every contract of the captain for necessaries for a ship implied an hypothecation, and induces a lien on the ship in favour of the creditor, sueable in the admiralty by the rules of civil law : and the case principally relied upon as authority for this doctrine, is cited from Cowper, p. 636.

THE case referred to, is a suit at common law, brought by a rope-maker against the owners of a ship, for ropes furnished to the captain. The plaintiff having charged *Harwood* (the captain) and the owners of the ship, for the ropes, without naming, or even knowing who the owners were.

THE fact was, that the owners, according to the custom of the county of Essex, in England, where they probably resided, had leased the ship to *Harwood* for a term of years on certain conditions—and the questions were, Whether under these circumstances, *Harwood* was not both captain and owner during the term? And whether the original

original owners ought to be responsible for debts contracted on account of the ship, whilst in the possession of Harwood under the lease?

LORD MANSFIELD was of opinion, that neither the lease, nor the ignorance of the creditor as to the names or persons of the owners, could exonerate them. And to shew that the owners are bound, he says.—“Suppose the ship had been impounded in the admiralty, and *that* had happened at the end of the term, the owners could not have had their ship without paying the debt for which she had been impounded.”

BUT this case is brought into view chiefly because Lord Mansfield in giving his opinion, observes, that the creditor had three securities for his debt, viz. the person of the captain with whom he contracted the *specific ship*, and the owners.

It should be remembered, however, that this was a suit at common law; that the owners, the ship, the captain, the creditor, and the contract, were all within the realm. And there can be no doubt but that the creditor might have his action at law, either against the persons of the contractors, or might attach their property, the ship, for his debt.

BUT

BUT this case has no reference whatever to the maritime or civil law. The doctrine of hypothecation is never once mentioned, nor is the contract of the captain at all placed upon that ground. The principle object was to determine whether the lease of the ship did not exonerate the lessors during the term.

So in the case cited from Vezay. p. 154. This also was purely a common law process; wherein the parties, and the whole transaction, appear to have been *infra corpus comitatus*. “Certainly, says the lord chancellor, by the maritime law, the master hath power to hypothecate the ship *during the voyage, and from the necessity of the case*; but it is different where the ship is *infra corpus comitatus*, and the contract made by the owners or masters on land, and not arising from necessity, then the laws of the land must prevail.” And this is consonant with the whole current of authorities respecting a maritime hypothecation, viz. that it must be made during the voyage, and from the necessity of the case.

WHEN money is borrowed on the ship before the voyage is begun, the ship is not answerable in the admiralty—1st Raym. 578. So in 2d. Raym. 982. in the case of Johnson versus Shippen, chief justice

justice Holt says—“ If a ship be hypothecated before a voyage begun, *that* is not a matter within the jurisdiction of the admiralty ; for it is a contract made here, and the owners can give security to perform the contract.”

It appears then to be a settled doctrine, that a ship cannot be hypothecated, according to the maritime law, before the voyage is begun, or in places where the owners reside, even for those necessaries without which the ship could not proceed to sea. The law means to favour the completion, not the commencement of a voyage.

For this reason the legislature of Pennsylvania hath, *by a special act*, given to the artificers, who build or repair, and to those who furnish necessaries to fit out a ship for sea, a lien on the vessel sueable in the admiralty before the voyage is begun, because the maritime law does not extend to their security.

SINCE then, it appears that the advance of monies to fit out the ship *Enterprize*, was made before the commencement of her voyage, and not from necessity, and that the captain, the owners, or some of them, and the contractors were all within the state at the time of the transaction ; and

as the suit is not brought under the act of assembly of the 27th of March, 1784, I cannot admit this case to be of admiralty jurisdiction, and therefore I adjudge

THAT the bill be dismissed, and the libellants pay the costs of suit.

August, 1785.

EDWARD FORBES *versus* THE BRIG HANNAH:

ANDREW HODGE, RESPONDENT.

EDWARD FORBES of Dublin, in Ireland, has libelled against the brig Hannah, for the amount of certain bonds of bottomry, which Francis Lewis, then captain and principal owner of the vessel, gave as security for monies advanced by Forbes, in the port of Dublin, for necessaries, as it is said, for the said brig, and to enable her to complete her voyage.

THE circumstances of this case appear from the testimony to be these :

FRANCIS LEWIS, principal owner of the brig Hannah, had chartered her to one *Varlo*, for a voyage from some port in America to Dublin in Ireland. *Varlo* himself went passenger with his goods, and Lewis was captain for the voyage. After their arrival at Dublin, Lewis borrowed money of Forbes, at three several times, for which he gave three bonds of bottomry on his brig, amounting, with premium and charges, to £.214:0:8 sterling money of Great Britain. Forbes then put a cargo on board the brig, in which it seems that Lewis was concerned, as he was to have one-half of the nett profits of the adventure, exclusive of freight, and to be answerable for one-half of the loss, if any there should be, on the sales. Lewis left Dublin with his cargo, bound for Boston in America. It does not appear whether ever he arrived at Boston, or what he did with his cargo ; but in April last he brought the brig into the port of Philadelphia, at which time some of his mariners sued in this court for wages due, and the brig was attached and condemned for those wages, amounting to £.29, Lewis making no plea of defence against the libel. In consequence of this libel and sentence, a writ issued to the marshal,

in the usual form, directing him to sell the brig Hannah, with her tackle, apparel, and furniture, *or such parts thereof*, as might be necessary, to satisfy the decree in favour of the mariners, together with the charges and costs of suit. But Lewis requested the marshal to sell *the whole* of the vessel, with her tackle, &c. under the decree, and even endorsed this request on the writ of sale. And to shew that he was the sole owner of the brig at that time, he exhibited to, and lodged with the marshal, an assignment or bill of sale from one Simpson, who had been a part owner, of all his interest in the brig, to Lewis.

ANDREW HODGE, respondent in this cause, purchased the vessel at the marshal's sale, and paid down the full consideration money, out of which the marshal deducted the mariners wages, with charges and costs of suit, and paid the balance to Lewis as sole owner. After this, Lewis went off without saying any thing of the bottomry bonds he had given to Forbes in Dublin. And now these bonds have come over, and Forbes has attached the brig in the hands of Hodge the purchaser.

ON these circumstances, two questions have arisen, viz.

First, WHETHER these bottomry bonds have hypothecated the vessel, according to the rules of maritime law, so as to bring the cause within admiralty jurisdiction ?

Secondly, SUPPOSING it to be so, whether the sale and purchase, under the authority of this court, have not vested the property in the respondent, exonerated of all prior engagements ?

To determine the first point, it will be necessary to consider the characteristic marks which distinguish an hypothecation, according to the maritime law, from a common bottomry bond or mortgage, according to the custom of merchants, cognizable by the common law.

By the maritime law “ a master of a ship hath
 “ no power to take up money by bottomry in pla-
 “ ces where his owners dwell; but when he is
 “ out of the country, and where he hath no ow-
 “ ners, or any goods of theirs, or his own, and
 “ cannot find means to take up, by exchange or
 “ otherwise, and that for want of money, the voy-
 “ age might be retarded or overthrown, monies
 “ may be taken up on bottomry.” *Molloy*. B. II.
 Ch. xi. Sec. 11.

FROM this it appears, that the true grounds of a maritime hypothecation are the *necessity* of the case, and the *want of personal credit*. Wherever this doctrine occurs in the books, these two circumstances are strongly pointed at. Thus, in 3d. *Mod.* 244, “The reason of the civil law, which allows the pawning of a ship for necessaries upon the high seas, seems to be plain, because there may be an extraordinary and invincible necessity to which the admiralty jurisdiction is limited: for if the law should be otherwise, the master might take as much money as he will.” And so the court, in that case, ordered a trial on the necessity.

So also, in *Bridgeman's case*—Hob. 12. a prohibition was granted, because the impawning was not shewn to be *occasioned by necessity*.

IN 1st. *Magens*, there is a report of an admiralty suit on a bottomry bond, at the conclusion of which, p. 329. the author says, “Persons living in sea ports may learn from this case, not to believe or trust too easily a captain they do not know; and when they propose benefiting themselves by lending money on bottomry to such whose distresses oblige them to seek it, the lenders, for their own satisfaction and security, ought to have
have

have proofs given *that there was a necessity* for such an advance, and that the money had actually been employed for the purposes alledged.”

FURTHER, the impawning must be in foreign parts; that is, where neither the owner, nor master hath any personal credit: for this constitutes an essential part of the necessity—“The master can have no credit abroad but by hypothecation.” Salk. 35.—“Where a ship in distress is forced into any port where her owners have no correspondents to supply the master with the money necessary to enable him to prosecute his voyage, he may take it on bottomry from those will advance it on the easiest terms.” 1st. *Mag.* 27.

THE reason is, the maritime law requires, that the monies should be lent solely on the credit of the ship, and that the security of the lender should depend altogether on her safety: and therefore, if she be well engaged, that is according to the principles stated, she shall be for ever obliged till redemption—Molloy book II. ch. ii. sec. 15. And therefore also, because of the hazard, an unusual interest is allowed on the monies advanced,

SUCH are the principles which designate a maritime hypothecation within admiralty jurisdiction.

BUT bottomry bonds may be given by owners for security of mercantile or other debts; and these may be executed either in places where the owners dwell, or in foreign parts, by their order. They may be formed under a variety of circumstances, and depend on many contingencies, according to the conditions or terms of the deed or contract.

IT should seem by the *necessity*, so frequently urged as the ground of a maritime hypothecation, that the ship should be driven by distress into some other port than that of her destination; or, at least, that some extraordinary casualty should occasion an unforeseen and inevitable expence in the port of her voyage. Because it is hardly to be supposed, that an owner would send his ship, much less that he would take her himself, to a place where he could not command either money or credit for ordinary repairs and supplies.

IN the present case it does not appear, nor has it been suggested, that any extraordinary circumstances occasioned an unforeseen necessity. The captain (Lewis), who was also principal owner, arrives

rives after a prosperous voyage at the port of destination with his freighter on board. Here the voyage is completed, and it may be presumed that he there received his freight. If so, he could not be without money sufficient to refit his vessel for a new voyage. And that he was not without personal credit is manifest, because Forbes entrusted him with a new cargo, and agreed to allow him 35/6 Irish money per ton for freight on all the goods he should deliver: and also one half of the nett profits arising from the sale of the cargo, he to run one half of the risk of loss. This mercantile connection shews at least that Lewis was in some credit with Forbes.

BESIDES, if we look into the accounts, we shall find the first article charged is £.32 : 5 : 6 sterling paid to Varlo, by Lewis's order, to take up and cancel a former bottomry bond. It seems strange that Lewis, after navigating Varlo and his goods across the sea, should fall in his debt. This circumstance is not at all accounted for. But be it as it may, Forbes should certainly have forwarded his former bottomry bond, with an account of the occasion and expenditures for which it was given, that a judgment might have been formed whether it was a proper hypothecation or not:

or

or have shewn that the brig was under condemnation of the admiralty at Dublin on account of that bond ; and that the £.32 : 5 : 6 was paid for her redemption.

UPON a view of the circumstances of the present case, I do not find them such as the maritime law requires to constitute a genuine hypothecation within admiralty jurisdiction. This point being conclusive, it is unnecessary to determine on the second general question.

I adjudge that the bill in this cause be dismissed ; and that the libellants pay the costs of suit.

MANUEL SAGAS DE CANIZARES

versus

THE SANTISSIMA TRINIDAD.

JUAN JOSEPH DE AGUIRE PEREZ, *Respondent.*

THE libel in this cause states two separate claims of Canizares, the complainant, against the brigantine Santissima Trinidad : the one founded on an hypothecation of the said vessel, made by the then captain to Santiago Cupifono at Havannah, for two hundred dollars advanced by the said Cupifono for necessaries for the said brigantine, as it is said, and to enable her to prosecute her voyage ; which instrument of hypothecation is endorsed or assigned over by the lender to the present libellant : and the other, founded on a written contract between Narisco Sanchez y Serna, then captain of the vessel, and Canizares the libellant, respecting the wages he should receive for serving as pilot and mariner on board the said brigantine in her voyage from Havannah to Philadelphia. As these claims arise from different contracts,

tracts, it is manifest that they must be separately considered.

To determine on the force of this instrument of bottomry, I shall first state the circumstances necessary to a genuine hypothecation, according to the maritime law; and then take a view of the history of this vessel's voyage, and her situation at Havannah when Cupifono advanced the money in question.

As to the first, I have had occasion in three former suits in this court, to state the law of a maritime hypothecation, and have not since found reason to alter my opinion of the principles on which those causes were decided. The causes to which I refer were Liebart, Baes, Durdeyn and Co. against the ship Emperor, Turnbull against the ship Enterprize, and Forbes against the brig Hannah. I can only now repeat the substance of what was then observed.

[*Here the judge recapitulated the doctrines advanced, and the authorities cited, in the cases referred to.*]

I shall now state the history of the voyage of this brigantine, as the same may be deduced from the testimony.

It appears that this vessel had been chartered on account of the king of Spain, and was to sail from Philadelphia to Carthagena with a cargo of flour which was to be sold there, and a cargo of dyewood purchased and brought back to Philadelphia, or some port of the United States. Such was the designated voyage; but it seems the captain, instead of returning to Philadelphia from Carthagena, went to Jamaica with an adventure of his own; to what amount does not appear: that at Jamaica he purchased dry goods fit for the Havannah market, and then took the brig to Havannah, where he disposed of the goods he had bought at Jamaica upon his own account: that at Havannah he borrowed two hundred dollars of Cupifono, and executed the instrument called the hypothecation, to engage the vessel and her freight for this sum: that part of this money was expended in paying wages to the mariners, and part in supplying them with fresh provisions: that the vessel was refitted at the king's arsenal, and at the expence of the intendant: and that she sailed for, and arrived at the port of Philadelphia.

I agree with the council for the libellant, that the validity of an hypothecation ought not to depend on the regularity of the captain's conduct with respect to his owners, previous to the time
of

of his arrival in a foreign port, and borrowing money for the relief of the ship's necessities ; and will go further, and say, that neither ought it to be affected by the captain's subsequent conduct ; provided the lender was in no wise privy to, or knowingly assistant in his obliquities.

IT has been urged on the other side, that the law of hypothecation was designed solely for the benefit of the owners, and an inference drawn, that if it can be shewn, that the owners of a vessel have not been benefited, but injured by the captain's conduct, and consequent hypothecation, it ought not to be allowed. But this law has for its object the good of commerce in general. And no stranger would lend money on hypothecation if his lien on the ship was to be invalidated by some future proof that the voyage was irregular, or that the captain had deviated from the orders of his owners, and injured their interest, either before or after the hypothecation made,

BUT where shall we find, in the present case, that *necessity* which should justify the captain's conduct, and be the ground of a genuine hypothecation ? This vessel was chartered for the use of the king of Spain by his agent : the cargo on board was on the king's account, and she arrives in a leaky
and

and disabled condition in one of his Majesty's ports, where he had an officer stationed. This officer, the intendant, orders the vessel to the public warehouse to be discharged, and then round to the king's arsenal to be repaired; all which was done at the king's expence. In truth, I cannot conceive a case of less necessity, or one wherein a more certain and able relief could be depended upon.

BUT it is said, that there were considerable delays before the intendant interfered; and that the captain was obliged to send in five or six memorials, and in the mean time the mariners were in great want of wages and fresh provisions; and that in this necessity the captain applied to Cupifono for two hundred dollars, who refused to lend them unless the vessel should be hypothecated for his security.

IT is in testimony, however, that this money was lent by Cupifono before the captain had made any application to the intendant, and therefore, the neglect of the intendant could not have occasioned the necessity of borrowing from Cupifono: that the captain of a vessel in the king's service, and in one of his majesty's ports, should not find credit for a few days provisions until the proper officer could

could be applied to, is too incredible to be ferriously admitted: still less can it be a legal ground for an hypothecation, that the mariners must have wages paid to them in a place where it does not appear that any wages were due; nor is it probable that any could be due, because this was neither the conclusion of the voyage, nor even a port of delivery.

THE money ought to have been lent solely on the faith of the hypothecation and not on any personal credit: but here was a strong and well founded credit; for it is in the proof that Cupifono knew that this vessel was chartered for the king's service; and it is expressly said, that the money was borrowed to pay wages and procure fresh provisions—"until money could be had from the intendant."

FURTHER, in the quotation from Molloy B. II. ch. xi. sec. 11. it is said—"When a master is out of the country, and where he hath no owners, nor any goods of theirs, *nor of his own.*"—Now it is confessed that the captain had goods of his own, and, as it should seem, to a considerable amount, since it was sufficient to induce him to violate his duty to his employers, in taking the vessel, contrary to their orders, on a trading voyage to Jamaica
for

for his own benefit ; that at Jamaica he bought goods suitable for the Havannah market, and actually sold them at the Havannah though contraband ; and that Cupifono, the lender, was privy to these circumstances. So that instead of the lender's having the vessel alone to look to for his security, he had two substantial personal credits to depend upon, viz. the intendant, from whom he might reasonably expect repayment of monies advanced for the use of a vessel in the king's employ ; and the captain, whose property he might have attached before he left the island, if satisfaction was not made. This circumstance alone, that is to say, Cupifono's knowledge that the captain had property of his own on the spot, sufficient to answer the present exigencies of the vessel, would have invalidated the bond as a maritime hypothecation, inasmuch as it removes that *necessity* which the law requires.

THERE is a circumstance in the present case, which although not in itself conclusive, forms too striking a feature in the transaction to pass unnoticed. A singularity in a maritime hypothecation is, that the law allows an extraordinary premium or interest to the lender, to any extent, according to the risk to be run ; because, if the ship should be lost, the money lent is lost with her. But

here, a stranger lends two hundred dollars to a captain in distress without even stipulating for common legal interest for the use of his money: I say, this alone might not be conclusive against the hypothecation, because a man may be as generous as he pleases; but in connection with the other circumstances, it gives room for suspicion, that the engagement of this vessel to Cupifono was not made within the rules or spirit of the maritime law.

FOR the above reasons, I adjudge that the bill in this cause be dismissed, so far as the same hath respect to a claim of two hundred dollars, said to have been lent on the credit of the brigantine Santissima Trinidad.

I am now to consider the libellant's demand of wages for serving as pilot and mariner on board this vessel from Havannah to Philadelphia.

THIS claim for wages, amounting to £.37:5:0, is founded on a written contract made at the Havannah between Narisco Sanchez y Serna, then

then captain of the vessel, and Canizares the libellant.*

BUT it has been contended, that as this agreement is in writing, and bears a seal, and is not, according to the terms thereof, in the usual way of agreeing for mariners wages, it becomes a special contract, and is not properly of admiralty jurisdiction.

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ITS

* *Copy of the Account annexed to the Libel.*

“ The brigantine Santissima Trinidad, to Manuel Sagas de Canizares,	-	-	-	-	<i>Dr.</i>
1788.					
Dec. 19.					£. s. d.
To cash lent in Havannah to captain Narifco Sanchez y Serna, commander of the said brigantine, by Santiago Cupifono,	-	-	-	-	75 0 0
To 5 months and 19 days wages, from July 1, to Dec. 19, at 7 <i>l.</i> 10 <i>s.</i>	-	-	-	-	42 5 0
To 3 months pay, agreeable to contract,	-	-	-	-	22 10 0
To his passage to Havannah,	-	-	-	-	22 10 0
					<hr/> 162 5 0
Received in Havannah 2 months advance,					15 0 0
					<hr/> 147 5 0
To 1 month's boarding Mr. Canizares has been obliged to find,					5 12 6
					<hr/> 152 17 6

Its being in writing, however, is no more than a testimony or memorandum of the agreement made, and does not affect the jurisdiction of this court. What is called a seal appears to be nothing more than a printed stamp, for which a duty is paid to the crown: certainly it is not the seal of the parties, or of either of them. But, as to the terms of the contract, these are indeed out of the usual course, and deserve consideration.

ONE of the reasons for allowing mariners to sue in the admiralty is, that the debt arises from services performed, or to be performed at sea, and a lien on the ship given to them for their security, because the contract they make is supposed to be on the credit of the ship.

Now, although the wages of twenty dollars per month, promised in the present case, appear to be extravagant, yet, as the difficulty of getting a person qualified to serve both as a skilful pilot and able mariner might have been great, I think the rate of wages per month ought to be allowed as contracted for. But I cannot, upon any principle, allow that a captain hath a power to bind his owners and their vessel to the payment of a mariner's wages for three months after his discharge, and after all services at sea and elsewhere have ceased.

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If he could legally do this for three months, why not for six or twelve; or even saddle his owners with an annuity for life to a mariner for a few weeks actual service? How far the common law might consider this contract as binding on the captain personally, it is not my business to say; but as judge of admiralty, I shall be far from doing my part towards establishing a precedent by which captains, in addition to the great power they necessarily have over the property of their employers, may have that of obliging them to the payment of unlimited sums for an unlimited time. The captain might have engaged for his owners to pay wages per month during the service, or a specific sum for the run to any amount justifiable by the circumstances and necessities of the case; but to bind the owner to periodical payments to a mariner after a total discharge from the service, is what I believe no captain of a vessel ever before attempted. For whether this was to be paid all at once, or at three several times, it matters not; the contract is for *three months wages after discharge*.

THERE is another claim under this contract for sixty dollars to take the libellant back to Savannah on being discharged here.

THE maritime custom is, that if a master or owner discharges a mariner in a foreign port, before the completion of the voyage for which he engaged, some reasonable allowance shall be made, over and above the wages due, to enable him to return to his own country, or go to the port, which by the articles, should have completed the voyage; and this allowance is usually the amount of one month's wages: and it is a reasonable custom, where the mariner is willing to perform articles and finish the voyage, but the master or owner thinks fit to discharge him sooner for their own convenience, and without just cause of complaint against the mariner. Therefore this part of the contract before us is consistent with maritime custom, but certainly unreasonable as to the sum promised.

WHATEVER power a captain may have by law to bind his owners by contracts made abroad for the services of the ship, yet he cannot oblige them beyond what is usual and customary, without shewing that the unusual charge, arose from the necessity of the case. The present charge is expressly made for conveying the libellant back to the Havannah: I have therefore enquired what is the usual charge for a passage from this port to the
Havannah,

Havannah, and find that forty dollars is an ample and generous allowance.

FRAUD and collusion between the captain and Canizares the libellant, have been suggested, but not proved: yet if I had not found that this cause might and ought to be determined on general principles, there are two circumstances in the case which would have induced a more strict enquiry into the captain's conduct. The one, which I have already noticed, is Cupifono's lending money on hypothecation without security, or even asking for common interest, which, though a possible, is not a usual occurrence. The other is a contract between the captain and Canizares, which concludes with these remarkable words—“ Each (that is the original and copy) *having the same strength as if they had been executed before a notary public at Havannah.*” The question naturally occurs, and why was not this contract executed before a notary public at Havannah? An honest captain, who is reduced to the necessity of binding his owners to hard and usual terms, would at least take care that nothing should be wanting in point of form and public notoriety to justify his conduct. And, besides, I suspect that this contract, which bears a printed seal or stamp, could not be legally executed according to the regulations of the maritime

ritime laws and customs, but in the presence of a notary or some public officer. But it was not necessary to clear up these appearances, as the cause may be decided on other grounds.

UPON the whole, I adjudge and decree, that Canizares, the libellant, have and receive from Juan Joseph de Aguire Perez, the respondent, the sum of 112 dollars and 60-90ths of a dollar, equal to £.42 : 5, Pennsylvania currency: that is to say :

For 5 months and 19 days wages, from July 1st, to Dec. 19th, at 20 dollars per month,	£.42 5 0
For his passage to Havannah,	15 0 0
	£.57 5 0
From which deduct 40 dollars paid in advance at Havannah,	15 0 0
There remains	£.42 5 0

WITH respect to the £.5 : 12 : 6 added to the account, and charged for a month's boarding, I shall take no further notice of it, than to observe, that it is neither mentioned in the libel, nor supported by any voucher or testimony.

FINALLY,

FINALLY, I adjudge that the libellant pay one half, and the respondent the other half, of the costs of suit.

J O H N S M I T H

versus

W I L L I A M L E A R D.

THE question was—Whether the person of the captain could be attached in the admiralty, in a suit for mariners wages; or whether the mariner must look to the ship alone for his security? In the present case, the ship was not in port.

AFTER argument, it was determined, that the captain was personally answerable. 3d Ba. 593; 1st Salk. 33; 1st Molloy, 355, 356.

PAUL

PAUL ANDERSON, & AL.

versus

JAMES FORBES, LATE MASTER OF THE DOLPHIN

THE case was—The libellants engaged in the year 1782, with James Forbes, then captain of the ship *Dolphin*, for a mercantile voyage from Philadelphia to the Havannah, and back again; for which they were to receive, not monthly wages, but a stipulated sum, to be paid them at the Havannah. Whilst the ship was at Havannah, the Spanish governor of Cuba had projected a military expedition against the island of New Providence, and offered considerable emoluments to such Americans in port as would enter their vessels in the Spanish service, for this expedition: viz. 10 dollars per ton for their vessels, and a gratuity of 700 dollars to each captain. Forbes, after paying his crew the stipulated sum for the original voyage, proposed to them this new expedition: an expedition not known, or thought of, at the time of the first contract, and of a nature entirely different

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ent from the service for which they stood engaged to the ship. The mariners declined this proposal, unless informed what recompence they were to have for their time and hazard in this new service. Whereupon Forbes assured them of at least 20 dollars per month to each man, and hinted further emoluments from the Spanish government. Thus assured, the mariners entered on the service, and afterwards sailed with the Spanish fleet, and were present at, and assistant in, the siege of New Providence.

THE only question seems to be, whether a contract expressly made shall be fulfilled or not?

WHEN the Spanish governor agreed to give 10 dollars per ton for American vessels, and a gratuity of 700 dollars to each captain, he certainly expected that such vessels should be properly manned, and fitted for the service. Captain Forbes knowing this, and knowing also that the proposed service could not, by any construction, be considered as a part of the original voyage for which the mariners had contracted, enters upon a new treaty with them. Suppose these mariners had rejected the proposed expedition, the captain could not have compelled them to go, but must have engaged other seamen for the purpose: And there
could

could have been no doubt but that the crew should be paid according to contract. The present libellants are precisely in the situation the new crew would have been in, and are equally entitled.

As it is in testimony, that the libellants were at least two months in the Spanish service, I adjudge; that they have and receive from the respondent, *fifteen pounds* each; and that the respondent pay the costs of suit, except such part of the said costs as may have accrued by the taking certain depositions, which were not admitted as evidence, which costs the libellants are to pay.

June, 1786.

C H A R L E S M O R A N

versus

A L E X A N D E R B A U D O I N.

THE libel in this cause states—That Charles Moran, the libellant, entered on board the ship
 l'Heureux,

l'Heureux, at Nantz, in France, on the 23d day of October, 1786, under an engagement for a voyage from the said port of Nantz to New Orleans, in the Mississippi; from thence to go to Martinique, and from thence to return to France: that Alexander Baudoin, the captain, had totally altered this voyage by repeated deviations, whereby the contract was broken, and thereupon the libellant prays a discharge, and the amount of wages due.

THE circumstances of this case, appear by the testimony, to be these:

THAT this vessel sailed from Nantz, October 3d, 1786: that the marines understood, and were informed, that this voyage was to be from Nantz to New Orleans; thence to the West Indies, and thence back to Nantz, or to some port in France; and that it would continue from 10 to 15 or 16 months: that under this expectation, the mariners were registered at the proper office at Nantz, according to the manner of registering seamen in France: that instead of pursuing this voyage, as designated to them, they were taken three times to New Orleans, twice to Martinique, once to Aux Cayes, once to Havannah, and were now brought to the port of Philadelphia: that in the course of these several voyages, the libellant and others of
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the crew, made frequent complaints of the prolongation of, and deviations from, the originally intended voyage, and had applied to the intendants of some of the ports they were at, demanding to be discharged, or taken back to France: but were detained in the service of the ship, by repeated assurances of the captain, that from the then next intended port they should sail for France: that in particular, when they were at Martinique the second time, the whole crew complained and demanded their discharge; whereupon the captain threw the boatswain and another sailer into prison: and that the boatswain wrote to the commanding officer of a frigate there, who sent for him out of prison, and obliged the captain to pay him the wages due, and discharge him.

To this libel and testimony, the respondent hath urged in reply:

THAT no contract or articles between the captain and the crew of this ship have been exhibited: that the libel itself is deficient in form; and that let the deviations from the original voyage be what they may, the libellant hath for his part justified the whole, by signing a verbal process on board the ship, on the 30th of April last, certifying that the ship l'Heureux had suffered damage by storm,
and

and agreeing to put into the port of Philadelphia in distress, which verbal process so signed, has been exhibited in this court.

As there is no ordinance of the United States, or act of the legislature of Pennsylvania touching the present object, the claim of the libellant, who is a French subject, and was shipped in France, will be best determined by the marine ordinances of the country to which he belongs, and under which he engaged in the service of this vessel. These ordinances strictly prohibit any captain or master of a vessel from receiving on board his ship any mariner, as such, who is not entered in his *rolle d'equipage* made up in the commissary's office, or *bureau de classes* of the port where the vessel shall be. See, *Ord. de Mar.* vol i. p. 422. and p. 715. Now as it has not been denied but that the libellant has served on board this ship ever since she sailed from Nantz, it is in vain to call upon him for proof of the contract made at Nantz, since the *rolle d'equipage*, or a copy of it, is always in the captain's hands, and never in the mariner's. Had no such contract taken place as mentioned in the libel, or should the libellant demand larger wages than had been agreed upon, the captain would have shewn the *rolle d'equipage* against him. As he has not done this, although

though in his power, it follows that the allegation of the libellant must be admitted as true. Indeed it is in positive testimony, that the libellant entered on board at Nantz, and was to receive fifty livres per month wages, which is sufficient proof of a contract.

THE next point is to consider the repeated deviations from the original voyage, and how far this should operate in releasing the mariner from his contract. To lay it down as a general rule, that the least deviation from a designated voyage should invalidate the articles and discharge the mariners from the ship's service, would perhaps be construing those articles too strictly, and would certainly be very injurious to commerce. Shipping articles ought not to be judged by the same rules with a policy of insurance, or a common law contract, their object and ground of reason being quite different. Yet gross and unnecessary deviations shall free a mariner from his engagement. But there is no present occasion to fix a general rule. This cause must be determined by positive law: and there is an ordinance of France express to the purpose Mar. Ord. vol. I. p. 548. art. 4.—
 “ If at any time after the arrival and discharge of the vessel at the port of her destination, the captain or master, instead of returning, shall freight

or load his ship to go elfewhere, the mariner may leave her if he choofes, unlefs it has been otherwife determined by his fpecial agreement." And this rule is further inforced by Valin's commentary on the article.

THERE appears to me a ftrong prefumption that the the boatfmain, who was paid and difcharged at Martinique by order of the commander of a frigate there, claimed the benefit of this ordinance. It is faid, indeed, that his mother was dead, and that he had bufinefs in France; but this I think would hardly be admitted as a fufficient reafon to difcharge a mariner in the midft of a voyage. It is plain that Baudoin did not deem it fufficient, for he put the man in prifon for demanding his wages and difcharge.

THE objections to the libel in point of form are not fufficient to invalidate the fuit. It is not indeed fo fpecific as might be wifhed, but the fubftance of the complaint is alledged, viz. an engagement for a certain voyage, a total deviation from that voyage, and a citation prayed for, to fhew caufe why the wages accrued fhould not be paid, and the libellant difcharged.

THE verbal process signed by the libellant on board the ship, is the next circumstance relied upon by the respondent. But this cannot have the operation expected. If the ship was really in distress, there is no doubt but that any mariner would sign his consent to put into a strange port to avoid impending danger, and refit the damaged rigging. But this deviation occasioned by necessity cannot serve as a justification of former deviations where no such necessity occurred.

I am clearly of opinion, that if this cause was tried before a French court of justice, the libellant could not be refused the benefit of the mariners ordinance expressly in favour of his claim.

I adjudge that the libellant shall have his wages, at the rate of fifty livres per month, from October 23d 1786 ; and that the respondent pay the costs of this suit.

June 1788.

J O H N T H Y B O U T

versus

A L E X A N D E R B A U D O I N

THYBOUT was a mariner belonging to the same ship and under the same circumstances with Charles Moran, libellant in the foregoing cause, but did not join in the libel with Moran; because, as it was said, the captain kept him on board confined till the determination of that suit should be known. But he now filed his complaint, claiming his wages and discharge.

COUNCIL for the respondent, in addition to their arguments in the former cause, alledged that the last voyage from New Orleans, was authorized by government to procure supplies for that city, which had just then suffered by a terrible fire; and secondly, that the libellant had made a new contract at New Orleans, and was entered accordingly on the rolle d'equipage there. In proof of these alle-

VOL. III. O gations,

gations, copies and translations of the ship's papers were offered in testimony. But the libellant's council objected to the admission of these papers. Whereupon an argument was had on this previous question. After consideration, the judge gave his opinion as follows.

THE question now before me is—Whether certain papers, presented to the court as copies and translations of the manifest, *rolle d'equipage*, &c. of the ship *L'Heureux*, respecting her last voyage from New Orleans, shall be admitted as testimony in the cause now in agitation, or not? And it is declared, that the design in procuring these papers is to prove, first, an authorized and necessary deviation from the original voyage contracted for at Nantz; and, 2dly, a new engagement made by the libellant at New Orleans.

THE correctness of these copies, and the authenticity of the originals, are supposed to be established by the deposition of Mr. John Leamy; and the fidelity of the translations are certified by the notarial seals of sworn interpreters.

THE fidelity of the translations is, I think, sufficiently ascertained, because the translator is officially known to the court, being commissioned by,
and

and answerable to government for the due execution of his trust. But it is not so certain what evidence shall be sufficient to authenticate the instruments of officers of a foreign country, so as to give them the force of legal testimony in our courts. The authorities that have been cited all refer to cases, where the originals, the copies, and the certifying officers, were all within the realm of England, and therefore do not come up to the point in question.

MR. Leamy's deposition as to the authenticity of these papers is founded on his belief only, and not on positive testimony, as appears on his cross examination in these words: "The said deponent
 " being cross-examined, saith, that he does not
 " personally know any of the persons who have
 " signed any of the original papers before men-
 " tioned, nor did he ever see any of them write:
 " and that he, the deponent, had no papers in
 " his custody with the hands and seals of the
 " above mentioned persons to them, to compare
 " the said papers with, except the signature of
 " the present governor, with which he did not
 " compare them."

BUT, secondly, it is manifest, that these papers were copied and translated in this city, pending this
 this

this suit, and within the cognizance of the court. Why then were not the originals exhibited, that the translations might be made by the direction, and under the authority of the court, after having had the opportunity of inspecting these originals, and judging of their authenticity? It has been attempted to shew that this could not be done*. But as the court of admiralty is always open, and as these papers were in the city for at least some days, there was time sufficient to have them compared, copied, and translated by authority. The court hath a right to the best testimony that can be procured with any reasonable convenience; and as the originals of these papers were in the hands of the respondent's council, and they have not thought fit to file them as exhibits in the cause, I shall not now admit the copies taken by their direction. I think such a precedent might have dangerous future consequences.

THE argument then proceeded on the merits, and nearly the same grounds were travelled over, which had been taken in Moran's case.

AFTER

* The captain sailed from the port during the suit, and took the original papers with him.

AFTER advisement, judgment was given as follows :

JOHN Thybout, the present libellant, having shipped at the same time, and under the same contract, with Charles Moran, whose suit was lately decided in this court, the testimony exhibited in Moran's case has been applied to this.

THERE are only three new exhibits in the present cause : viz. a protest made by captain Baudoin and his officers, soon after his arrival at Philadelphia, dated the 17th of May last, and two depositions ; one of William Matthié, a passenger on board the l'Heureux, and the other, a second deposition of Bastian Gaudin, who had given testimony in the former cause. The purport of the protest is to shew, that this ship was driven by a N. N. E. storm into the port of Philadelphia, in distress, and the tenor of the two depositions tends directly to contradict the assertion of the protest.

FROM all that appears in testimony, this vessel was bound from New Orleans to the port of Nantz in France : and Matthié, the passenger, received a passport from the governor's secretary at New Orleans, to be admitted on board

as a passenger to Nantz. How then it could possibly happen, that this, or any other vessel, being in the latitude of $25^{\circ} 3'$ north, should be driven by a violent N. N. E. wind, to the latitude of $35^{\circ} 4'$ north, where the verbal process was made on board, is to me quite incomprehensible. But as I do not think the libellant's claim does at all depend upon the validity of either the verbal process, or the subsequent protest, I shall observe no further upon them.

IT is manifest to me, that the libellant hath been detained in the service of this ship an unreasonable length of time beyond the period of the voyage contracted for: that the original agreement made at Nantz, between the captain and his crew, has been violated and dissolved by frequent unnecessary deviations: that the promises of the captain, at every deviation, to return immediately to France, have been repeatedly broken: and that, if this cause was tried before a French court, under the marine ordinances of that country, there is no doubt but that the libellant would recover his wages, and obtain his discharge.

I see no reason for distinguishing this from Charles Moran's case: and therefore, I adjudge, that the libellant shall have his wages, at the rate

of 30 livres per month, from the 23d of October, 1786, to the 30th of June last; deducting 180 livres, which he acknowledges to have received: and that the respondent pay the costs of suit.

July, 1788.



P O E M S

ON

SEVERAL SUBJECTS.

T O T H E

REV. MR. W I L L I A M S M I T H,

ON HEARING HIS SERMON UPON THE DEATH OF

Mr. W I L L I A M T H O M A S M A R T I N.

I Call no aid, no muses to inspire,
Or teach my breast to feel a poet's fire :
Your soft expressions of a grief sincere
Bring from my soul a sympathizing tear :
Taught by your voice, my artless numbers flow,
I sigh in verse, am elegant in woe,
And loftier thoughts within my bosom glow ;
For when in all the charms of language drest
A manly grief flows genuine from the breast :
What generous nature can escape the wounds,
Or steel itself against the pow'r of melting sounds ?

}
}

Oh ! could I boast to move with equal art
The human soul and melt the stony heart ;

My long lov'd friend should thro' my numbers shine,
Some virtue lost be wept in ev'ry line :
For virtues he had many—twas confest,
That native sense and sweetness fill'd his breast ;
But cooler reason checks the bold intent,
And to the task refusing her consent,
This only truth permits me to disclose,
That in your own you represent my woes,
And sweeter than my song is your harmonious prose.

September, 1754.

O D E ON M U S I C.

HARK ! hark ! the sweet vibrating lyre
 Sets my attentive soul on fire ;
 Thro' all my frame what pleasures thrill
 Whilst the loud treble warbles shrill,
 And the more slow and solemn bass
 Adds charm to charm and grace to grace.

Sometimes in sweetly languid strains
 The guilty trembling string complains :
 How it delights may ravished ear
 When the expiring notes I hear
 Vanish distant and decay !—
 They steal my yielding soul away.

Neatly trip the merry dance,
 And lightly touch and swiftly glance ;
 Let boundless transport laugh aloud
 Sounds madly ramble mix and crowd,
 Till all in one loud rapture rise,
 Spread thro' the air and reach the skies.

But when you touch the solemn air,
 Oh ! swell each note distinct and clear ;
 In ev'ry strain let sorrow sigh,
 Languish soft and sweetly die.

So shall th' admir'd celestial art,
 Raise and transport my ravish'd heart ;
 Exalt my soul, and give my mind
 Ideas of sublimer kind.
 So great the bliss it seems to prove
 There must be music too above.
 That from the trumpets silver sound
 Of wing'd arch-angels plac'd around
 Thy burning throne---Oh ! king of Heaven !
 Most perfect harmony is giv'n :
 Whilst happy fairs in concert join
 To make the music more divine,
 And with immortal voices sing
 HOSANNAHS to their glorious KING.

S O N G.

BEAUTY and merit now are join'd,
 An angel's form, an angel's mind
 Are sweetly met in *thee* ;
 Thy soul, which all the virtues grace,
 Shines forth with lustre in thy face,
 From affectation free.

II.

Who in thy form, too lovely maid ! .
 Can read thy temper there display'd ;
 Can look and calmly see ?
 The face that with such beauty charms,
 The breast which so much virtue warms,
 Is sure too much for me !

To Miss _____,

ON HER KIND ASSISTANCE IN THE VOCAL PARTS OF AN
ORATORICAL EXERCISE, PERFORMED AT
THE COLLEGE OF PHILADELPHIA.

I.

THE pleasing task be mine, sweet maid !
To spread thy growing fame ;
For early virtues such as thine
An early honour claim.

II.

'Twas nobly done, to lend thy voice
And soft harmonious song,
When *Freedom* * was the rapturous theme
That warbled from thy tongue.

III.

Yet lovely fair ! thy voice, tho' sweet,
We should not most admire ;
Good-nature, and the kind intent,
A nobler praise require.

IV.

* Alluding to a song which she sung in praise of Freedom.

IV.

Let not the merit all be plac'd
In thy harmonious skill ;
'Tis not the deed obliges most,
The virtue's in the will.

V.

Thus still proceed, above all pride ;
Such themes be ever thine :
So to the *good* shalt thou be dear,
And favour'd by the *Nine*.

TO

TO THE MEMORY OF

MR. WILLIAM WILLCOCKS,

A BELOVED FRIEND.

DRAW near ye youths, in whom soft sorrows dwell,
 Whose streaming eyes your heartfelt anguish tell:
 Come seek with me the tomb where *Pollio* lies,
 Tears aiding tears, and sighs encreasing sighs!
 How great the grief! when genius fall a prey
 In early bloom to death's unyielding sway?
 When all the prospects of a father's joy,
 A mother's fondest wishes for her boy,
 One cruel stroke must blast, one cruel stroke destroy. }
 Let not th' unskilful muse attempt to tell
 Thy many virtues, though she knew them well;
 She knew thy soul adorn'd with ev'ry grace,
 And sure that soul was pictur'd in thy face.

The youths, thy fellows, shall delight to tread
 The noble footsteps thy example led;
 To make those virtues in their conduct shine,
 Which once, dear youth, we all acknowledg'd thine.
 How few excel! they'll place thee mid that few,
 Lament your loss, and strive to be like you.

Oh! may your fate this warning give to all,
 "That old age *must*, and blooming youth *may* fall."

HERMI-

HERMITAGE, A POEM,

INSCRIBED TO

MR. JACOB DUCHÉ, JUN.

I.

WHILST other bards in happier lays
The fair Amanda sing,
Teach the sweet lyre her grateful praise
To waft from ev'ry string :

II.

Whilst you the softer theme prolong
Of Seraphina's voice,
And in description make your song
Harmonious as your choice :

-- III.

My muse delights in humble strains
To sing of sylvan scenes,
Of rural prospects, flow'ry plains,
And wide extended greens.

IV.

IV.

Sweet Hermitage * ! thy happy feat,
 'The muse's choice and mine;
 Thy shady silent soft retreat
 Shall in description shine.

V.

That secret walk of liveliest green,
 That breeze inviting shade,
 Appears a solemn silent scene
 For contemplation made.

VI.

There will I range, and to the muse
 Address my ardent pray'r ;
 In such a place she can't refuse,
 Nor would be backward there.

VII.

Oft did this happy grove resound
 Strains sweeter far than mine ;
 Here sat the Bard †, and here around
 Stood the indulgent Nine.

VIII.

Poetic music from his tongue
 Harmonious roll'd away ;
 The birds in dumb attention hung
 To hear his softer lay.

IX.

* The feat of the hon. Josiah Martin, esq. upon Long-Island.

† The rev. Mr. Smith, who resided there several years.

IX.

And thou my friend, in later days,
 Fill'd this refounding grove
 With songs of matchless Delia's praise,
 Soft as the breath of love.

X.

Dear pensive youth, oft have you fought
 At eve, this pleasing shade;
 Your very soul wrapt up in thought,
 As lonely here you stray'd.

XI.

Or shall my fancy—restless power!
 Another scene display,
 And paint thee in yon jasmine bow'r,
 Joyful, alert, and gay.

XII.

With Delia's sprightly converse blest
 The hours unheeded glide,
 And Pyllades, friend of thy breast,
 Attending at thy side.

XIII.

With joy I tread the flow'ry green
 Which thou hast trod before;
 Strive to repeat each happy scene,
 And count thy pleasures o'er.

XIV.

Where'er my wond'ring eyes I bend,
 New beauties still I find;
 Here cooling vistas far extend,
 The gardens bloom behind.

XV.

To distant plains I stretch mine eye,
 And view th' enlarged scene;
 Above a vast extended sky,
 Below a boundless green*.

XVI.

Thence, swiftly borne in airy flight,
 The breezes of the spring,
 To these blest scenes of calm delight
 Both health and pleasure bring.

XVII.

At early morn I love to tread
 The garden's gravelly walk,
 Catch Flora blushing in her bed,
 Whilst dew drops bend each stalk.

XVIII.

To see the lovely blooming rose
 Her choicest sweets display,
 And ev'ry radiant charm disclose
 To sol's inviting ray.

XIX.

* The great plains on Long-Island.

XIX.

Her waving foliage glitt'ring bright,
 With drops of pearly dew :
 Like diamonds sparkling to the light,
 They strike the distant view.

XX.

The faithful matron thus to meet
 Her absent lord's return,
 Her hair, her neck, her waist, her feet,
 Doth with rich gems adorn.

XXI.

And as she lonely spends each day
 His absence to bemoan,
 The minutes gliding slow away,
 Whilst he her lord is gone.

XXII.

So in the dreary shades of night,
 The rose her beauty veils,
 'Till with returning joy and light,
 The sun o'er all prevails.

XXIII.

But when the soft ey'd eve invites
 My steps from yonder glade,
 Then, then, my soften'd soul delights
 To seek the darksome shade.

XXIV.

XXIV.

Devotion fills my glowing breast,
 And all my powers combine
 To praise my God, to make me blest,
 In transports quite divine.

XXV.

Behold to raise the solemn scene
 The silver moon arise ;
 With mildest lustre gild the green,
 With radiance fill the skies.

XXVI.

Her feeble inoffensive ray
 Scarce glimmers thro' the trees,
 Whose leaves with trembling murmurs play,
 Shook by the passing breeze.

XXVII.

'Tis silence all—my soul arise,
 Arise to prayer and praise ;
 Thy God looks down with friendly eyes,
 He listens to thy lays.

XXVIII.

Oh thou, whose goodness knows no end,
 Whose mercies I enjoy,
 In praise to thee my breath I'll spend,
 My latest hours employ.

XXIX.

Let me oft thus thy influence know,
Oh ! be thus ever kind;
The brightness of thy visage show ;
Enlighten thou my mind.

XXX.

So shall my soul to heav'n ascend,
And join'd with angels there,
Before thy footstool lowly bend,
In more refined pray'r.

B

ADVICE

ADVICE TO AMANDA.

I.

AMANDA, since thy lovely frame,
 Of ev'ry charm posselt,
 Hath power to raise the purest flame
 And warm the coldest breast :

II.

Oh ! think that heav'n could ne'er design,
 Thou too reserved maid,
 That ever beauties, such as thine,
 Like unknown flow'rs should fade.

III.

When next you see your faithful swain,
 Your *Strepson* at your feet ;
 When next you hear him sigh his pain
 And tend'rest vows repeat.

IV.

Then think 'tis fit a love so true
 Should meet a kind regard ;
 And think 'tis given alone to you
 His virtue to reward.

V.

If constancy, with merit join'd,
 Hath any charms for thee,
 Let *Strephon* thy acceptance find,
 For such a swain is he.

VI.

No longer then, too cruel fair,
 Defer the happy day;
 But with thy love reward his care,
 His tenderness repay.

VII.

So shall th' indulgent eye of Heav'n
 The worthy choice approve,
 When such victorious charms are giv'n
 A prize to faithful love.

A N E P I G R A M.

ON THE

DEATH OF A FAVOURITE LAP DOG.

CHLOE the muse records thy name,
And thou, tho' dead, shalt live in fame;
Yet know this honour, not to you,
But is to *Mira's* favourite due.

L'ALLEGRO.

L' A L L E G R O.

HENCE melancholy, care and sorrow,
 My heart defers you till to-morrow;
 I have no room within my breast
 For any dull, cold, lifeless guest—
 But hither come, life raising *joy*,
 In likeness of a laughing boy.
 Thy temples crown'd with op'ning flow'rs,
 The late produce of vernal show'rs ;
 Around thy shoulders let there be
 An azure mantle light and free ;
 Part shall thy graceful body bind,
 And part shall loofely flow behind ;
 With thee let soft breezes bring
 Choiceft odours of the spring.

Frolic, frisky, wanton, gay,
 Round and round thee let them play ;
 Tofs thy garment high in air ;
 Wave thy loofe luxuriant hair,
 Or court the flow'rs that crown thy head
 Enliv'ning sweets around to spread.

As thou thus approach'st me nigher
 Let me hear the warbling lyre ;
 Graceful use the springy quill,
 Touch it with superior skill ;
 But not to such soft languid airs,
 Soothing sorrows, soothing cares,
 With which the silly singing swain
 Proclaims imaginary pain.
 But strike me up sounds brisk and gay,
 Sounds that may steal my soul away ;
 Make a soft glow of gladness rise,
 And show thee sparkling in mine eyes.

Thus attend me whilst I stray ;
 Wild as fancy leads the way,
 Over valley, hill, and plain
 To the ocean's wild domain :
 O'er the wild seas far extending
 Let me see the world's arch bending,
 And behold with wond'ring eye
 The rounded globe, the meeting sky ;
 Where the white clouds swimming low
 Drink the waters as they go ;
 Where the sun soft dews and rain
 Exhales to shed on earth again ;
 Whence skim the dusky shades away
 Before the splendid source of day ;
 Or where the silver queen of night,
 First tips the trembling deep with light.

Or let me stray through the waving groves
 Where the turtle cooes her loves.

Where

Where the linnet's warbling lay
 Still attends my flow'ry way ;
 And the lark's melodious song
 Charms me as I go along :
 Or let me pause and view the scene,
 The blooming vales, the hillocks green ;
 The stream, that winding in meanders,
 Thro' the tufted meadow wanders ;
 The fields where flocks in safety stray,
 And harmless lambkins sport and play.

Behold far off, with roaming eye,
 Between two oaks a cot I spy,
 Where *Darby* sits beside the door,
 Nor envies kings their royal store :
 Whilst *Joan*, a matron staid and sage,
 Remains the comfort of his age ;
 And *Phillis* near, with voice so sweet,
Phillis their hand-maid, spruce and neat,
 Cheers their old hearts with merry song,
 And spins and sings the whole day long.

And here beneath a friendly shade
 The am'rous swain is careless laid :
 On oaten pipe he loves to play
 And wear the tedious hours away ;
 Till Dolly leaves her flock behind
 Her faithful *Thyrsis* here to find :
 And there behold with anxious look
 The wiley shepherd baits his hook :
 The sportive fish, that nimbly glide
 And cut with silver fins the tide,

Caught

Caught by his art, now helpless lie,
And flutter, pant, and gasp and die.

Thus let me pass the summer days
In blithsome scenes and jocund ease :
But when bleak winter comes again,
With all his fullen vap'ry train,
Abroad his snowy mantle spreads,
And rattles hail stones o'er our heads ;
Then, when the groves delight no more
Nor songsters warble as before,
But ev'ry verdant shelter's lost,
Nipt by the blasting wind and frost ;
Soon as the stream thro' flow'ry ways
No more in pleasing murmurs strays,
But firmly bound to either side
In icy chains, forgets to glide ;
Quick let me shun the horrid sight,
And to the city take my flight ;
Where mirth knows one continual round
And pleasures ever gay abound :
Attend me, *joy*, attend me there,
And let thy presence banish care.
Oh ! lead me where the chearful fire
Doth burn, and jest and wit inspire ;
Whilst the slow revolving night
Leaves ample room for long delight.
Meanwhile let *Bacchus*, jolly boy !
Be found thy bon-companion, joy :
Let num'rous friends surround the hearth,
Devoted all to glee and mirth ;

Where

Where never sorrow dare appear,
 Or thought intense, or gloomy care :
 But all airy light and free—
 Glad vot'ries all to *jollity* :
 Whilst wit doth still with laughter join,
 And open hearts are caus'd by wine.

Or whilst the rigid winter yields,
 Prospects of ice and snowy fields,
 Soon as the hasty short-liv'd day
 In the red west withdraws her ray,
 And glitt'ring stars with feeble light,
 Bedeck the fable garb of night.

Quick to the ball-room, joy, repair,
 For thou wilt hardly miss me there ;
 Where the promiscuous sparkling throng
 The gayly jocund scene prolong :
 Where art with native beauty joins,
 And each victorious fair one shines
 In all the pomp, in all the show,
 That dress can give and mirth bestow.
 Here in full glory may be seen
 Zaphyria riv'ling beauty's queen ;
 Around her press the less'ning throng
 To hear the music of her tongue :
 And whilst in Celia's robes we find
 A noble air, a taste refin'd ;
 More pow'rful charms her features wear,
 For Cupid keeps his revels there :

Soft blushes in her cheeks arise,
And love looks languid in her eyes.

Meanwhile gay wit the time beguiles,
With humours quaint and simp'ring smiles.
Dick flaunts it in his tinsel'd coat,
And *Ned* speaks tender lines by rote ;
Chloe with blushes seems to hear
Her love-sick *Damon* fighting near ;
Whilst *Mira* both their thoughts descries,
And reads soft souls in tell-tale eyes. ;

But hark ! the music's sudden sound
Spreads universal gladness round ;
Joy lightens quick in ev'ry face,
An instant buz fills all the place :
And now prepared on either hand,
The beaux and belles in order stand :
And now they trip the merry dance,
And to quick movements smoothly glance.
Each fair her partner leads astray,
Thro' a long labyrinthian way ;
Each swain his flying fair pursues,
Who still the pleasing toil renews.

Me the shrill foaring sounds inspire,
With transports that can rise no higher ;
My body skims along the floor,
I feel my willing feet no more :
The music lends me wings ; and I
In waving motions seem to fly :

And

And beaux and belles and tapers bright,
Swim undistinguish'd in my fight.

If such thy pleasures, smiling joy,
Oh ! may'st thou e'er my mind employ ;
Dawn in my breast perpetual day,
And chase intruding care away.

I L P E N S E R O S O.

VANISH mirth, and vanish joy,
 Airy pleasures quickly cloy ;
 Hence all ye bacchanalian rout,
 And wine, and jest, and noisy shout ;
 And quips, and cranks, and gay grimace,
 And wit, that wears a double face.
 Hence ev'ry kind of jollity,
 For you have no delights for me.
 But welcome, welcome, melancholy,
 Thou goddess sage, demure, and holy !
 Exalt thy ever musing head,
 And quit, oh ! quit, thy sleepless bed !
 With languid looks, and anxious eyes,
 Divinest melancholy rise !

And thou, oh Smith ! my more than friend,
 To whom these artless lines I send :
 Once more thy wonted candour bring,
 And hear the muse thou * taught'st to sing :
 The muse that strives to win thy ear,
 By themes thy soul delights to hear :
 And loves, like thee, in sober mood,
 To meditate on *just* and *good* :

Whilft

* He was the author's preceptor.

Whilst melancholy fooths to rest
Each tumult rising in the breast.

Exalted themes ! divinest maid !
Sweet melancholy, raise thy head !
With languid look, oh ! quickly come,
And lead me to thy hermit home :
There let thy sorrow soothing reign,
Detain me long in pensive strain ;
Exalt my thoughts, possess my soul,
Enlarge my views, and seize me whole.
Oh ! give me thy delights to know,
The heart that bleeds for human woe :
The virtuous throb, the grief-sworn eye,
The falling tear, and deep-drawn sigh.

Exalted themes ! divinest maid !
Sweet melancholy, raise thy head !
With languid look, oh ! quickly come :
And lead me to thy hermit home.
Or be thou with me whilst I rove
Thro' yonder dark untrodden grove,
Where the moon is rarely seen
Glimm'ring thro' the dusky green ;
Whilst an awful silence reigns
O'er valleys, hills, and distant plains :
Nothing but the night-bird's cry,
Echoing thro' the vaulted sky ;
Nothing but the ceaseless rill
Murm'ring o'er its pebbles still :
Or the distant falling flood

Shakes the silence of the wood.
 There I'll wander till there's found,
 Stretch'd upon the leafy ground,
 An oak, which many a summer's day
 Hath crumbled in a slow decay;
 There down upon its mossy bed
 In listless length I'll lean my head;
 While the small worm that gnaws its heart,
 Shall music to my soul impart.

Or let me in some crazy boat,
 Along the wat'ry surface float;
 Leaning pensive o'er its side,
 Let me view the rippling tide;
 Whilst Cynthia's cold declining rays,
 Who now but half her orb displays,
 On the clear bosom of the deep,
 In mild composure seems to sleep.

But hark! what voice so loud and shrill
 From yonder dark romantic hill,
 Strikes sudden on my startled ear,
 And warbles forth in ditties clear?
 'Tis her's *—that bird well known to fame,
 The fond repeater of her name—
 Proceed, sweet bird, I love thy strain,
 Encreasing still the solemn scene:
 I'll sit attentive to thy note,
 Till Cynthia's latest rays go out.

Then

* A night-bird, vulgarly called the Whipper-will.

Then on the margin of a stream,
 I'll lay me silent, think, and dream ;
 Where no pale glimpse of borrow'd light
 Breaks through the drowfy noon of night :
 And stars in vain with feeble ray,
 Attempt to give a doubtful day :
 While clouds far off low low'ring rife,
 Poffeffing first the nether skies ;
 Thence lazy lab'ring to the poll,
 Up the steep arch their vengeance roll,
 Black as the purpose of a guilty foul.



Here retir'd from noise and folly,
 Sober visag'd Melancholy !
 On a rustling rusby bed,
 With thee I'll lean the languid head ;
 And in the dimpled tide descry
 The gath'ring horrors of the sky ;
 See the stars dancing as they go,
 And view the other heav'n below :
 Whilst from behind the bull-rush near,
 The frog's hoarse-cadenc'd voice I hear ;
 Whose oft repeated hollow found,
 A pleasing sadness spreads around.
 But hark ! rude rustling thro' the trees,
 A sudden unexpected breeze,
 Swift bursting from the darksome wood,
 Shakes the smooth surface of the flood ;
 Then slow I raise my downcast eye,
 To gaze the drear presageful sky,

Where

Where clouds high heap'd, and swimming low;
 Hang heavy on night's awful brow.
 Around a gloomy silence reigns,
 Hush'd is each throat thro' hills and plains :
 The stars but now that shone so bright,
 Slide swift and vanish out of sight.
 The rapid storm comes on apace,
 The heav'ns wear one distracted face ;
 And ruder blasts unbounded rove
 In fullen murmurs thro' the grove—
 Down yonder dreadful depth of sky,
 In ragged sheets the light'nings fly ;
 Peals following peals hiss through the air,
 And burst in awful ruin near :
 Descending quick the heavy floods
 Dance on the stream, and rattle in the woods.

Whilst thus the elements engage,
 And with encreasing fury rage;
 Oh ! let me find some stony shed,
 Where I may safely lodge my head;
 T' enjoy the horrors of the storm,
 And to its God due rites perform.
 Beneath yon rock, whose mossy side
 With fearful bend o'erhangs the tide,
 Grotesque and wild, a cave I spy,
 And to its shelter quickly fly.
 But as I climb the grass-grown steep,
 Whose darksome height juts o'er the deep ;
 Sent from aloft, with startled ear,
 A sudden voice of woe I hear—

" RAGE on thou tempest of the sky,
 " Your fiercest vengeance I defy :
 " A ruder storm whirls in my breast,
 " And death alone can give me rest ;
 " My sorrows in this stream shall sleep,
 " And I"—then plunges in the deep.

Nature a-while yet fond of life
 Maintains with death an equal strife;
 The lover strives to gain the shore,
 But sinks, alas ! to rise no more.

Save me, ye powers, from scenes so sad,
 Scenes not of melancholy bred ;
 But sprung from furious wild despair,
 In Stygian cell begot of care.

But might I hear true love complain,
 In a more mild and temp'rate strain ;
 Then let my frequent feet be seen
 On yonder steep romantic green ;
 Along whose yellow gravelly side,
Schuylkill sweeps his lucid tide :
 Where waters fall with constant roar,
 Re-bellowing down the rocky shore.
 * Where nightly at the turf-clad grave,
 In concert with the bird of eve ;
 Beneath the glimpses of the moon,
 The hermit mourns *Amelia* gone :

C

Till

* Alluding to the affecting story of *Theodore* and *Amelia*, in the first number of the *Hermit*.—Vide Amer. Mag. for October, 1757.

Till reason lifts his eye to heav'n,
And mild submitting thoughts are given.

Thus, melancholy, shalt thou please,
If thou wilt find me scenes like these :
Thus may'st thou e'er my mind employ,
And banish ev'ry lighter joy.

But when the summer scenes are lost,
Welcome winter ! welcome frost !
'Then I'll spend the long, long night,
By the lamp's pale and glimm'ring light :
Creeping nigher still and nigher
'To the half extinguish'd fire,
Where midst the glowing coals I view
Lambent flames of livid blue :
Or listen to the crackling tread
Of heavy foot on snowy bed :
While howling blasts around me rage,
And wind, and snow, and hail, engage ;
And through a crevice in the wall,
Boreas whistles shrill and small ;
And the doors, by time grown weak,
On their iron hinges creak :
There I'll muse on stories old,
By a toothless matron told ;
Of a tall, wan, and slender sp'rit,
Stalking in the dead of night ;
Whose long trailing winding sheet
Flows luxuriant round his feet :
Gaping wounds all o'er him bleed,
To disclose some horrid deed :

With

With beck'ning hands he seems to say,
 "Haste to my grave, come, come away!"

Thus should my fancy ever find
 Some dreary scene to fill my mind;
 And thus I'd sit with fixed eye,
 To see the crumbling embers die,
 Fearing to turn to either side,
 Lest there the horned spectres glide:
 Till morn, slow peeping from on high,
 Should twinkle with unwelcome eye;
 Then would I shun th' intruding ray,
 And hide me from the garish day;
 Darkling to bed would silent creep,
 Hush'd by the howling winds to sleep.

A M O R N I N G H Y M N.

I.

ARISE! and see the glorious sun
 Mount in the eastern sky :
 See with what majesty he comes,
 What splendor strikes the eye !

II.

Life, light, and heat he spreads abroad
 In ever bounteous streams ;
 This day shall joyful myriads own
 The influence of his beams.

III.

How fresh the healthful morning air !
 What fragrance breaths around !
 New lustre paints each op'ning flow'r
 New verdure cloaths the ground.

III.

No ruffling storms of wind or rain
 Disturb the calm serene :

But gentle nature far abroad
 Displays her softest scene.

V.

Thro' chequer'd groves and o'er the plains
 Refreshing breezes pass,
 And play with ev'ry wanton leaf,
 And wave the slender grafs.

VI.

See yonder silver gliding stream ;
 The sun's reflected ray,
 Doth in its wat'ry bosom sport,
 And on its surface play.

VII.

The trees that shade its flow'ry banks,
 Are nourish'd by the flood ;
 Whilst from their branches songsters sweet,
 Re-echo thro' the wood.

VIII.

They with their little warbling throats,
 Salute the rising day ;
 And in untaught, but pleasing strains
 Their grateful homage pay.

IX.

Oh ! let us then with souls sincere
 Adore that pow'r Divine !
 Who makes that orb move thus complete,
 Who makes his rays to shine.

X.

Who causes ev'ry rising day
In beauty to return ;
And bids the sun's meridian height
With brighter glories burn.

XI.

Who morning, noon, and evening too,
Has with his blessing blest ;
And kindly gives the night's still shades
For wearied man to rest,

A N E L E G Y.

ON THE DEATH OF

MRS. J A N E W I L C O C K S.

FROM the bright glories of celestial day,
 Where hosts angelic, rang'd in vast array,
 Salute thy soul, and with seraphic breath
 Calm the rude horrors of the recent death ;
 Blest shade look down, my mournful accents hear,
 Oh ! see me shed the tender parting tear !
 Too soon, alas ! the best of friends I mourn ;
 To soon with cypress deck thy silent urn ;
 Too soon my muse employs her softest lays,
 To paint my grief, and to attempt thy praise.
 Oh ! warm my bosom whilst thy worth I sing ;
 Oh ! teach my hand to touch the plaintive string.
 Mournful the subject, mournful be my song,
 And let soft sorrows each sad line prolong ;
 All joy, all comfort, from my soul is fled,
 Since thou art number'd with the sleeping dead.
 By moon light oft I lonely seek the plain,
 Sooth my distress, and fondly nurse my pain ;

There

'There muse on scenes I've past with thee before,
 And weep to think those scenes can be no more.
 How oft in pleas'd attention have I hung,
 While wisdom roll'd harmonious from thy tongue!
 In precepts form'd to guide my heedless youth,
 Thro' the bright paths of ever radiant truth.
 Such were the virtues that adorn'd thy breast,
 To know thee well, was to esteem thee best :
 Heav'n to the sweetness of thy sex had join'd,
 An active spirit, a heroic mind ;
 A woman soft, as far as softness can,
 In noble resolution more than man.
 Religion pure thy spotless bosom fir'd,
 And all thy actions, all thy thoughts inspired :
 And yet thy soul would ever turn aside
 With just disdain from ostentatious pride ;
 Whatever fortune Heav'n design'd, 'twas thine,
 A bright example in that sphere to shine.
 'Twas thine to grace each varying state of life,
 The tend'rest mother, and the fondest wife ;
 Faithful in friendship, true to ev'ry trust,
 And to thy God, thyself, and neighbour just ;
 As far, at least, as mortal powers can go,
 For strict perfection dwells not here below.
 Long hadst thou liv'd to bless thy weeping friends,
 Long hadst thou liv'd for many a glorious end.
 If * *Pollio's* ghost had not forbid thy stay ;
 His beck'ng ghost invited thee away.
Pollio the wife, the generous, and the young,
 Whose early fate the sorrowing muse hath sung.

What

* Her son, Mr. William Wilcock's was the occasion of hers.

What tho' thy body moulders into dust,
 Thy spirit joins him mid th' encircling just.
 E'en now I see thee in those heav'nly plains,
 Where perfect blifs, and peace eternal reigns ;
 Where pain and sorrow can no more annoy,
 But thy soul drinks of never ending joy :
 Where all the bitterness of grief is o'er,
 And death's cold pangs shall agonize no more :
 There shalt thou listen to the heav'nly sound
 Of cherubim and seraph chaunting round ;
 In songs celestial thou shalt there adore,
Him that shall last when time shall be no more.

V E R S E S

*Inscribed to the officers of the 35th regiment on their embarkation for
the expedition against Louisbourg.*

NOW warmer suns, once more bid nature smile,
 The new-born spring peeps from the teaming soil :
 From ice the streams, the fields from snow are free,
 And blossoms swell on every pregnant tree :
 The softened season melts in sudden show'rs,
 And *April* all her flow'ry treasures pours ;
 Well might I sing the early warbling lay
 Of rural songsters at the dawn of day ;
 The riv'let winding thro' the long drawn vale,
 The new cloth'd mountain, the green tufted dale ;
 Or shepherd's pipe, that in melodious strains,
 Welcomes the spring to valleys, hills and plains.
 But these I leave, and for the aspiring muse,
 A nobler theme, a loftier subject choose.
 This is the season whose warm rays inspire,
 Heroic bosoms with a martial fire :
 To war's alarms all softer pleasures yield,
 And ev'ry Briton burns to take the field.

The drums loud beat, the fife's shrill foaring lay,
 The trumpet's clangor, the dread cannon's play;
 All, all conspire to bid the heroes go
 And thunder vengeance on the daring foe.
 Ye who have roll'd the winter months away,
 In scenes of pleasure and in pastimes gay;
 At home endow'd with ev'ry art to please,
 Of free politeness and becoming ease;
 Abroad, the noble champions of our cause,
 Protectors of our liberties and laws.

Long have you known the gently thrilling fires
 Which beauty kindles and which love inspires;
 Long have enjoy'd the graces of the fair,
 To please and to be pleas'd was all your care:
 Far other transports now your bosoms warm,
 Far other glories your ambition charm.—
 Go, seek for conquest where loud tumults reign,
 Where death runs liquid o'er the impurpled plain;
 Where victor's shouts, and vanquish'd warriors cries
 In clouds of smoke promiscuously arise,
 And undistinguish'd reach the vaulted skies;
 Where desolation stalks the tragic field,
 Where Britons conquer, and where Frenchmen yield.

See on the surface of that rolling tide
 Fast moor'd the proud expecting navies ride:
 They loose their streamers from each top mast height,
 And spread their wings, impatient for the fight;
 Eager thro' seas, to waft you hence away,
 Where laurels strew the field, and honours crown the day.

Oh!

Oh ! may indulgent heav'n assistance to lend !
Oh ! may success Britannia's arms attend :
Let ev'ry sword a keen destruction wear ;
Each well aim'd spear a pointed vengeance bear ;
And may each hero, that we send from home,
Back to our wishing arms a glorious conqueror come.

S O N G.

I.

HE A R, heav'nly goddess, queen of love!
 A heart that owns thy fire;
 Let my distress thy pity move,
 And grant my fond desire.

II.

Far absent from my soul's delight,
 I languish and complain:
 In tender accents day and night,
 I foorth my secret pain.

III.

Pensive, I seek the lonely bow'r,
 Where to my cheated view,
 False fancy, by her magic pow'r,
 Doth former scenes renew.

IV.

And *Strephon's* look, and *Strephon's* smile,
 Please my deluded eye;
 His fancied presence, for a while,
 Affords a short-liy'd joy.

V.

Since then no longer, as before,
 His converse I enjoy ;
 Thus let my *Strepbon* ever more
 My faithful mind employ.

VI.

Whene'er soft sleep shall over me
 Its happy influence shed,
 Oh ! let his airy image be
 Still hov'ring round my bed !

VII.

With ev'ry native charm and grace
 Adorn the lovely youth ;
 And in the sweetness of his face,
 Paint constancy and truth.

ON THE LATE SUCCESSFUL EXPEDITION AGAINST
LOUISBOURG.

AT length 'tis done, the glorious conflict's done,
And British valour hath the conquest won :
Success our arms, our heroes, honour crowns,
And Louisbourg an English monarch owns !
Swift, to the scene where late the valiant fought,
Waft me, ye muses, on the wings of thought—
That awful scene, where the dread god of war
O'er fields of death roll'd his triumphant car :
There yet, with fancy's eye, methinks I view
The pressing throng, the fierce assault renew :
With dauntless front advance, and boldly brave
The cannon's thunder, and th' expecting grave.

On yonder cliff, high hanging o'er the deep,
Where trembling joy climbs the darksome steep ;
Britannia lonely sitting, from afar
Waits the event, and overlooks the war ;
Thence, roll her eager wand'ring eyes about,
In all the dread anxiety of doubt ;
Sees her fierce sons, her foes with vengeance smite,
Grasp deathless honours, and maintain the fight.
Whilst thus her breast alternate passions sway,
And hope and fear wear the slow hours away.

See ! from the realms of everlasting light,
 A radiant form wings her aerial flight.
 The palm she carries, and the crown she wears,
 Plainly denote 'tis *Victory* appears :
 Her crimson vestment loosely flows behind,
 The clouds her chariot, and her wings the wind :
 Trumpets shrill founding all around her play,
 And laurel'd honours gild her azure way—
 Now she alights—the trumpets cease to found,
 Her presence spreads expecting silence round :—
 And thus she speaks ; whilst from her heav'nly face
 Effulgent glories brighten all the place—

“ Britannia, hail ! thine is at length the day,
 “ And lasting triumphs shall thy cares repay ;
 “ Thy godlike sons, by *this*, their names shall raise,
 “ And tongues remote shall joy to swell their praise.
 “ I to the list'ning world will soon proclaim
 “ Of *Wolfe's* brave deeds, the never-dying fame,
 “ And swell with glory *Amberst's* patriot name. }
 “ Such are the heroes that shall ever bring
 “ Wealth to their country, honour to their king :
 “ Opposing foes, in vain attempt to quell
 “ The native fires that in such bosoms dwell.
 “ To thee, with joy, this laurel I resign,
 “ Smile, smile, *Britannia!* victory is thine.
 “ Long may it flourish on thy sacred brow !
 “ Long may thy foes a forc'd subjection know !
 “ See, see their pow'r, their boasted pow'r decline !
 “ Rejoice *Britannia!* victory is thine.”

Give your loose canvas to the breezes free,
 Ye floating thund'ers, bulwarks of the sea :
 Go, bear the joyful tidings to your king,
 And, in the voice of war, declare 'tis victory you bring :
 Let the wild croud that catch the breath of fame,
 In mad huzzas their ruder joy proclaim :
 Let their loud thanks to heav'n in flames ascend,
 While mingling shouts the azure concave rend.
 But let the few, whom reason makes more wise,
 With glowing gratitude uplift their eyes :
 Oh ! let their breasts dilate with sober joy.
 Let pious praise their hearts and tongues employ ;
 To bless our *God* with me let all unite,
He guides the conqu'ring sword, *he* governs in the fight.

D

A P R O-

* The English forces landed at Louisbourg, June 8, 1758, and entered the city in triumph on the 27th of July following.

A P R O L O G U E

SPOKEN BY MR. LEWIS HALLAM, AT THE OPEN-
ING OF A THEATRE AT PHILADELPHIA.

TO bid reviving virtue raise her head,
 And far abroad her heav'nly influence shed;
 The soul by bright examples to inspire,
 And kindle in each breast celestial fire:
 For injur'd innocence to waken fear;
 For suff'ring virtue swell the gen'rous tear;
 Vice to expose in each assum'd disguise,
 And bid the mist to vanish from your eyes,
 With keener passion, that you may detest
 Her hellish form, howe'er like virtue drest:
 The muse to cherish, genius to inspire,
 Bid fancy stretch the wing, and wit take fire—
 For these we come—for these erect our stage,
 And shew the manners of each clime and age:
 For these we come—oh! may your smiles attend
 The pleasing task, and all our toils befriend.
 —Away ye senseless, ye whom nought can move,
 Vice to abhor, or virtue to approve;
 Whose souls could ne'er enjoy the thought sublime,
 Whose ears ne'er taste the muse's flowing rhime.

But ye whose breasts the pow'rs of softness know,
 Who long have learnt to feel another's woe;

Nor blush to heave the sympathetic sigh,
 Or drop the pious tear from pity's eye ;
 Attend our work, and may you ever find
 Something to please and to improve the mind :
 That as each diff'rent flow'r that decks the field
 Does to the bee mellifluous sweetness yield :
 So may each scene some useful moral show ;
 From each performance sweet instruction flow.
 Such is our aim—your kind assent we ask,
 That once obtain'd, we glory in the task.

EPILOGUE FOR TAMERLANE,

SPOKEN BY MRS. DOUGLAS.

ONCE more, as custom hath ordain'd, I come
 To speak the epilogue, and learn our doom :
 Oh! may you be to our endeavours kind,
 And let us hope your glad applause to find!

The moral of our play I need not tell,
 You who observ'd it sure must know it well.
 In all her glory virtue stood confest,
 With just rewards and happy triumphs blest :
 Whilst sullen tyranny no more to rise,
 Low in the dust, debas'd and vanquish'd lies.
 Who but abhors a *Bajazet* to see?
 Who would not wish a *Tamerlane* to be?
 Oh! lovely virtue, such thy charms appear,
 That e'en thy greatest foes thy name revere!
 And you, ye fair! in bright *Arpasia* find
 Merit well worthy to engage the mind.
 How firmly fix'd was her unshaken love,
 Which neither threats nor offer'd crowns could move?
 Too few, I fear, are like *Arpasia* found,
 For such heroic constancy renown'd.
 —But hark!—methinks I hear a voice this way
 Which seems, in angry accents, thus to say:

“ Why

“ Why, what a stupid epilogue is this :
 “ Let’s stop her serious prating with a hiss.”—
 Good fir, have patience, I shall soon have done ;
 But one short sentence more and I’ll be gone.

Hail happy people ! thus with freedom blest,
 By no insulting Bajazet oppress !
 Fair virtue here shall fix her radiant throne,
 And ignorance and vice in fetters grone.
 Here polish’d learning shall adorn the mind,
 And merit ever due respect shall find ;
 Whilst British liberty—celestial sound,
 Bids ev’ry heart be gay, and nature smile around.

A P R O L O G U E

IN PRAISE OF MUSIC—SPOKEN BY MR. HALLAM,

*At a play given for purchasing an organ for the college-hall in
Philadelphia.*

WITH grateful joy encircling crouds we view,
Well pleas'd the friends of music are not few ;
Such worthy patrons may it ever find,
And rule with gentle sway the human mind.

When the loud organ fills the sacred choir,
The pious soul is wrapt in holy fire ;
The trembling isles the solemn airs resound,
And list'ning angels hang attentive round ;
Harmonious strains with high devotion join,
And sacred themes make music more divine.

Another joy delights yon love-sick swain,
Soft sounds alone can sooth his am'rous pain,
And ev'ry warble thrills through ev'ry vein.

}

Whilst the bold warrior hails the loud alarms,
When drums and trumpets call to arms ! to arms !
His eager soul imbibes the martial strain,
And hastes to press the yielding foe again.

Such

Such pow'r hath music o'er the human soul,
Music the fiercest passions can controul;
Touch the nice springs that sway a feeling heart,
Sooth ev'ry grief, and joy to joy impart.
Sure virtue's friends and music are the same,
And blest that person is that owns the sacred flame.

CHA-

C H A R I T Y, A P O E M.

*Delivered by the author at a public commencement in the college of
Philadelphia, May 1, 1760.*

TO grace the pomp of this auspicious day,
 Once more with joy, we swell th' advent'rous lay.
 Oh! thou, who oft from yon Pierian height,
 Mid æther pure directs thy easy flight!
 Diffuse ardor to my song impart,
 And with thy fire dilate my glowing heart!
 Say, who is she that first in virtue's train,
 With grace celestial treads th' ideal plain?
 Her awful beauty dignifies the place,
 And modest joy illumines all her face;
 Around her form effulgent glories play,
 Mild as the lustre of the dawning day—
 'Tis *Charity*, th' enraptur'd muse replies,
 'Tis *Charity*, bright offspring of the skies.

On the proud top of that aspiring height,
 Stands *Offentation's* fane, expos'd to sight;
 The front, whose summits pierce the vaulted sky,
 Gay gilded glitter to the distant eye;
 O'er the rich portal, in a golden glare,
 The name of *Charity* is written fair—

—'Tis

'Tis all deception—charity we know
 Loves not to dwell mid pomp and empty show.
 There rural joys in vain we hope to find,
 'Tis all a barren wilderness behind ;
 No dying music melts upon the ear,
 And not one rose perfumes the sickly air.

But down in yonder vale, recluse from fight,
 An humble dwelling stands, seat of delight—
 Where soft ey'd *Charity* retir'd is found,
 'Mid thousand sweets that circle her around.
 No high wrought arches lead the pompous way,
 No gilded domes outshine the face of day ;
 A secret path enrich'd with many a sweet
 Direct her vot'ries to the blest retreat ;
 There, rural beauties all the senses please,
 And liquid music floats in ev'ry breeze.

Happy, thrice happy, he whose pious breast
 Detains soft *Charity*, a glowing guest !
 Whose lib'ral hand, as far as pow'r is giv'n,
 Spreads blessings round him, like the hand of heav'n :
 Who glows with love, gen'rous and unconfin'd,
 Whose bosom burns for good of all mankind :
 Who rears the head of virtue in distress,
 Rejoicing ever in the pow'r to bless.
 How oft, in sorrows clouded, may we find
 The shining traces of a gen'rous mind ?
 How oft doth want and ignorance control
 The struggling efforts of a mighty soul ?
 See yonder youth, whom inauspicious fate
 Hath sunk obscurely in a low estate :

What tho' by birth, no titles, wealth, or fame,
 With borrow'd glories deck his humble name?
 Yet nature's courteous hand with care most kind,
 Hath form'd his body, and enrich'd his mind:
 Life glows as warm in ev'ry throbbing part,
 And blood as rich flows round his beating heart.
 Fast bound in ignorance, by want suppress'd,
 An active soul slept silent in his breast.
 Oh! pious *Charity*: to call it forth,
 And bid it rise to dignity and worth;
 To warm his breast with sentiments refin'd,
 And dawn the day of knowledge on his mind:
 To teach him virtue's dictates to pursue,
 And place the rocks of error in his view.
 * Some such there are, without whose friendly care,
 Long had his seeds of glory slumber'd there:
 Without whose bounty all his pow'rs had been
 The slaves of ignorance, perhaps of sin.
 Of deeds like these, oh! who shall sing the praise,
 Weak is the muse, and feeble are her lays—
 But angels silver-tongu'd from heav'n shall part
 To whisper blessings to the bounteous heart:
 And those who justly *Charity* regard,
 Will find that virtue is her own reward.

DESCRIP.

* The trustees of the college, who maintain a charity school for 70 poor children.

DESCRIPTION OF A CHURCH.

AS late beneath the hallow'd roof I trod,
 Where faints in holy rapture seek their God ;
 Where heart stung sinners suing Heav'n for grace,
 With tears repentant consecrate the place.
 Oh ! how my soul was struck with what I saw,
 And shrunk within me in religious awe :

The massy walls, which seem'd to scorn the rage
 Of battering tempest and of mouldering age ;
 In long perspective stretch'd, till breadth and height
 Were almost lost in distance from the sight ;
 With monumental decorations hung,
 They spoke mortality with silent tongue.
 There, sorrowing seraphs heav'nward lift their eyes,
 And little cherubs weep soft elegies.

I trod—and started at the mighty noise ;
 The hollow pavement lifted up its voice ;
 The swelling arch receiv'd the rising sound,
 Responsive to the stroke the walls around,
 And sent it murm'ring to the the vaults around,
 Thro' lengthen'd aisles prolong'd the solemn sound. }

Far in the west, and noble to the sight,
 The gilded *organ* rears its tow'ring height :

And

And hark ! methinks I from its bosom hear,
 Soft issuing sounds that steal upon the ear
 And float serenely on the liquid air. }
 Now by degrees more bold and broad they grow,
 And riot loosely thro' the isles below ;
 'Till the full organ lifts its utmost voice,
 And my heart shudders at the powerful noise :
 Like the last trump, one note is heard to sound
 That all the massy pillars tremble round :
 The firm fixt building shivers on its base,
 And vast vibration fills th' astonish'd place :
 The marble pavements seem to feel their doom,
 And the bones rattle in each hollow tomb.

But now the blast harmonious dies away,
 And tapers gently in a fine decay :
 The melting sounds on higher pinions fly,
 And seem to fall soft oozing from on high ;
 Like evening dew they gently spread around
 And shed the sweetness of heart-thrilling sound ;
 'Till grown too soft, too fine for mortal ear,
 The dying strains dissolve in distant air.
 Methought I heard a flight angels rise,
 Most sweetly chaunting as they gain'd the skies :
 Methought I heard their less'ning sound decay
 And fade and melt and vanish quite away.

Hail heav'n born music ! by thy pow'r we raise
 Th' uplifted soul to acts of highest praise :
 Oh ! I would die with music melting round,
 And float to bliss upon a sea of sound.

T O C E L I A,

ON HER WEDDING DAY.

WHILST Heav'n with kind propitious ray,
 Smiles, *Celia*, on thy nuptial day,
 And ev'ry sympathizing breast
 With transport glows to see thee blest;
 Whilst present joys the hours beguile,
 And future prospects seem to smile.
 Shall not my muse her tribute bring
 And gladly touch the trembling string?
 I know 'tis usual at such times
 To pay respect in pompous rhymes;
 To bid the whole celestial race
 With brightest glories fill the place,
 And from their mansions hasten down
 The nuptial rites with bliss to crown:
 As if each goddess might be said
 To be the poet's waiting maid:
 But I who have no power at all,
 Such high divinities to call,
 Must lay those stratagems aside
 And with plain fable treat the bride.

And

As *Cupid* thro' the azure way
 Did late with wand'ring pinion stray,
 The little urchin chanc'd to spy;
 His master *Hymen* passing by;
 Surpris'd with conscious guilt and shame,
 Knowing his conduct much to blame,
 With nimble haste he strove to shroud
 His presence in a fleecy cloud.
 But *Hymen* saw, nor could he fail
 To see a wing—oh! piteous tale!
 Peep from behind the misty veil.
 Th' observing god with eager joy,
 Rush'd on and seiz'd th' affrighted boy.—
 “ Well, master *Cupid*, are you caught
 “ At last, he cry'd, I almost thought
 “ You, far from hence, had taken flight,
 “ And quite forsook the realms of light;
 “ For wherefo'er I choose to stray,
 “ I seldom meet you in my way.—
 “ Wherefore so shy? since well you know
 “ It is not very long ago
 “ Since *Jove* in council did decree,
 “ Yourself and services to me;
 “ That it might ever be your care,
 “ To warm those breasts whom I would pair
 “ With mutual love, and bless my bonds,
 “ By mingling hearts with joining hands.
 “ Instead of which, you rambling go,
 “ And sad confusions make below:

}

“ Whilst my softest bondage often falls,
 “ Where custom points or int’reſt calls.
 “ But *Jove* himſelf ſhall quickly hear,
 “ How much his dictates you revere ;
 “ Yet e’er we part, ’tis my deſire,
 “ You kindle love’s celeftial fire
 “ In the fair *Celia*’s peaceful breaſt,
 “ And make her am’rous *Strephon* bleſt.”

With piteous tone, and tear-full eye,

Thus did the little god reply :

“ This, *Hymen*, this I muſt deny,
 “ Do—any other ſervice chooſe,
 “ There’s nought but *this* I can reſuſe ;
 “ I have my word and honour giv’n,
 “ And firmly ſworn by earth and Heav’n,
 “ That love ſhall *Celia* ne’er moleſt
 “ No dart of mine e’er wound her breaſt.
Hymen, firſt made an angry pauſe,
 Then ſpoke—“ Thou traitor to my cauſe, !
 “ Is’t thus with mortals you conſpire,
 “ To break my torch and quenche my fire ;
 “ I oft have wonder’d why that maid
 “ My ſoft encircling bands delay’d ;
 “ The wonder ceaſes now ; I find
 “ That *you* and *Celia* have combin’d,
 “ My pow’r celeftial to deſpiſe
 “ And rob me of my faireſt prize.
 “ But *Celia* ſoon in wedlock’s chain
 “ Shall ſhine the faireſt of my train :

“ Virtue her days with peace shall crown;

“ And I will show’r my blessings down ;

“ Her happy state shall others move,

“ To seek the joys of wedded love.”

Much would the weeping boy have said ;

But *Hymen* urg’d, and love obey’d :

A shaft he chose from out the rest,

And sunk it deep in *Celia’s* breast.

Soft thro’ her frame the poison crept ;

And *Hymen* laugh’d and Cupid wept.

Then upwards, far from human sight,

They wing’d their way in speedy flight,

Wrapt in a glorious blaze of light.

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A P A R A P H R A S E.

ON THE 107th PSALM.

WITH choral voice, oh ! let the nations join
 And bless the Lord in harmony divine :
 His tender mercy over all extends,
 And vast creation on his pow'r depends.
 Let those, with grateful hearts, his goodness tell
 And to his praise the solemn anthem swell ;
 Whom he vouchsaf'd with kind directing hand,
 To lead in safety from a hostile land ;
 At once with hunger and with thirst oppress'd,
 The fainting soul pin'd in the panting breast.
 In deep distress they call'd on God most high,
 Who with his wonted mercy heard their cry :
 The heav'ns did mana for their food distill,
 And from the rock burst forth the limpid rill :
 From desert wilds, where destitute they roam,
 He brings at length the wearied wand'ers home ;
 They conquer, by his aid, the nations round,
 And fill a land with cheerful plenty crown'd.

Oh ! that the people, with united voice,
 Would in the mercies of the Lord rejoice ;
 His holy name in hallelujahs bless,
 And all the wonders of his pow'r confess :
 To hungry souls he doth his joy impart,
 And with sweet comfort soothe the wounded heart.
 But those who light esteem'd his proffer'd love,
 Did soon the terrors of his vengeance prove ;
 His injur'd justice will o'ertake his foes,
 And punish all who dare his pow'r oppose :
 Long in a dungeon's dreary depth they lay,
 Shut from the radiance of the chearful day ;
 Where gall'ng chains their captive limbs confin'd,
 And wasting anguish prey'd upon the mind.
 But when to heav'n they lift their ardent pray'r,
 And all the miseries of their state declare ;
 Sincerely swell the penitential sigh,
 And for offended mercy loudly cry :
 The God of mercy sends a quick relief,
 And songs of triumph soon dispel their grief :
 He breaks their bands, wipes all their tears away,
 And on their darkness pours reviving day.

Oh ! that the nations, with united voice,
 Would in the mercies of the Lord rejoice ;
 His holy name in hallelujahs bless,
 And all the wonders of his pow'r confess !

The guilty wretch is punish'd for his sin ;
 A wounded conscience tortures him within ;

With growing horror, aggravated fear,
 He fees the ftroke of death already near :
 Then, if to *God* his forrowing foul returns,
 And with contrition deep her trefpafs mourns,
 The ear of pity waits on his diftrefs,
 And ready pardon will repentance blefs :
 The hand of mercy ftops the hand of death,
 The voice of love recalls his fleeting breath.

Oh ! that the nations, with united voice,
 Would in the mercies of the Lord rejoice ;
 His holy name in Hallelujahs blefs,
 And all the wonders of his pow'r confefs !

Thofe who in fhips purfue their dangerous way
 Thro' the vaft empire of the tracklefs fea,
 Behold the pow'r of Heav'n's almighty king,
 And with a fearful awe his praifes fing.
 At his tremendous word the billows rife,
 And clouds glide fwiftly thro' the floating skies ;
 Sulphureous lightnings dart from pole to pole,
 And o'er the burden'd æther heavy thunders roll ;
 The howling tempeft feems to shake the globe,
 Whilft troubled nature wears her darkeft robe :
 Yet doth the little bark the tumult brave,
 And on the white top of the burfting wave
 Quivering ſhe hangs—her mafts the clouds divide,
 And from beneath, hell opes her portals wide :
 Confufion reigns o'er all the watry realm ;
 Th' aftonifh'd feamen quit the ufelefs helm :

With growing terrors are their bosoms fill'd,
 And in their veins the purple currents chill'd :
 In their distress to God they lift their pray'r,
 And tho' the tempest roars, the Lord will hear :
 The same dread word that swell'd the boiling main,
 Commands a calm, and all is smooth again ;
 Their terrors vanish, whilst propitious gales
 Swift to the port impel their swelling sails.

Oh ! that the nations with united voice,
 Would in the mercies of the Lord rejoice ;
 His holy name in hallelujahs bless,
 And all the wonders of his pow'r confess !

The fruitful land is blasted for the sin
 Of the rebellious race that dwell therein :
 The springs forget to flow, the clouds to pour,
 Upon the parched plains their wat'ry store ;
 In vain the husbandman with patient toil
 Provokes to plenty the unyielding soil ;
 The drooping plant wither'd and barren dies,
 Whilst all its vegetative moisture dries.

But unexhausted plenty from the Lord
 Attend on those, who by his holy word
 Direct their steps—for them shall gardens grow
 In desert wilds and bubbling fountains flow :
 Their flocks, their herds, their vineyards shall increase,
 And smiling plenty dwell with gentle peace.

Such are the blessings that await the just,
The lot of those who place in God their trust :
Then let the wise by virtue hope to prove,
The lasting mercies of his endless love :
For who can bear of guilt the secret sting,
Or dare to vengeance Heav'ns almighty king.

AN ELEGY.

SACRED TO THE MEMORY OF

JOSIAH MARTIN, ESQ. JUN.

WHO DIED IN THE ISLAND OF ANTIGUA, JUNE 1762.

'T WAS evening mild—the sun's declining ray,
 No longer flamed from the western sky ;
 But stars contended with the fading day,
 And creeping twilight boded darkness nigh.
 With wand'ring step, slow pace and pensive look,
 I sought the silence of the darksome grove ;
 Where weeping sorrow swells the murm'ring brook,
 And contemplation, lonely, loves to rove:
 In the deep gloom the sudden sounds I hear
 Of dulcet prelude from the warbling lyre ;
 The voice of woe stole plaintive on my ear,
 And thus accorded to the trembling wire :
 “ Let proud ambition with her faithless throng,
 As interest points, address the venal song ;
 Still in the paths of labour'd flattery toil,
 And seek for virtue in a barren soil.

Let

Let it be thine, my artless muse, to raise,
 To modest merit, well deserved praise ;
 For goodness lost, to bid thy numbers flow,
 In the smooth strains of unaffected woe,—
 From blossom'd hopes, and life's most flow'ry height,
 See *Martin's* spirit wings eternal flight ;
 Not wisdom, truth, and innocence combin'd,
 A graceful person, an informed mind
 Prevent the stroke—he meets a hasty doom ;
 Death shrouds his rising glories in the tomb :
 Mourn then, my muse, in strains elegiac mourn,
 And deck with cypress his untimely urn.

In vain for thee, beloved youth, in vain,
 We strove the heights of science to attain ;
 Say, can I e'er forget those blissful days,
 * When hand in hand we trod the flow'ry maze ?
 Say, can I e'er forget the warmth divine
 That from thy heart did in each action shine ?
 Each winning grace, and all thy pow'r to move
 By soft persuasion, undissembled love :
 Thy strength of reason passion to controul,
 And the sweet temper of thy yielding soul ;
 Thy steady friendship, sentiments refin'd,
 With all the gentle virtues of thy mind.
 Oh ! fate severe ! just to o'ercome the toil
 Of early life, and see the prospect smile
 With dawning bliss ;—but never to enjoy—
 Too sudden shades the rising scene destroy.

* It was

* He was fellow student with the author.

'Twas thus * the Prophet, by divine command,
From Pisgah's top beheld the promis'd land :
He saw—and died ; for so did Heav'n ordain—
But *God* is just, and let not man complain.

* *Moses.*

AN

AN EPI TAPH.

FOR AN INFANT.

SLEEP on, sweet babe ! no dreams annoy thy rest,
 Thy spirit flew unfullied from thy breast :
 Sleep on, sweet innocent ! nor shalt thou dread
 The passing storm that thunders o'er thy head :
 Thro' the bright regions of yon azure sky,
 A winged seraph, now she soars on high ;
 Or, on the bosom of a cloud reclin'd,
 She rides triumphant on the rapid wind ;
 Or from its source pursues the radiant day ;
 Or on a sun-beam, smoothly glides away ;
 Or mounts aerial, to her blest abode,
 And sings, inspir'd, the praises of her *God* :
 Unveiled, thence, to her extensive eye,
 Nature, and Nature's Laws, expanded lie :
Death, in one moment, taught this infant more
 Than years or ages ever taught before.

DISAPPOINTED LOVE.

RECITATIVE.

HIGH rais'd in æther, from her silver throne,
 The moon in melancholy mildness shone;
 Nor voice, nor sound disturb'd the mid-night hour,
 Save the sad south-wind murmur'ing in the bow'r;
 When fable clad, with slow and pensive mien,
Narcissa lonely pass'd the dusky green:
 All wan with wasting grief, forsook her bed,
 And sought the silent mansions of the dead;
 Her bosom heav'd with many a deep drawn sigh,
 And the big tear stood trembling in her eye:
 Then from her lips thus broke the voice of woe—
 Then planets listen'd, and the moon mov'd slow.

AIR.

Farewell to all that promis'd joy;
 No flatt'ring hopes my thoughts employ;
 A wounded heart bleeds in my breast,
 And death alone can give me rest.

And

And thou, lamented youth, farewell !
 With thee the smiling prospect fell ;
 Sad o'er thy grave, broods black despair,
 For all my hopes lie buried there.

But now thy form mov'd in my sight,
 I glow'd with love and dear delight ;
 Thy bosom burn'd with equal fire,
 With equal pangs of soft desire.

But now I deck'd me for thy bride ;
 Elate in youth and beauty's pride,
 My throbbing heart beat quick alarms,
 Whilst bliss approach'd in *Damon's* arms.

A voice soon strikes my startled ear,
 Whose dismal accents yet I hear ;
 Forbear, fond maid, forbear, it cries,
 For *Damon*, thy lov'd *Damon*, dies.

All strength forſakes my tott'ring frame ;
 My tongue ſcarce utters *Damon's* name ;
 Prostrate I fall ; my eye-balls roll,
 And anguiſh wrings my tortur'd ſoul.

Yet, yet I hear the deep ton'd bell,
 With minute ſtrokes tell out hiſ knell ;
 My ſwelling heart grows big with grief,
 And not one tear vouchſafes relief.

Oh ! if beneath yon pale moon's ſphere,
 Thy lambent ſpirit floats in air,

Witness my sigh's, hear me complain,
And pity my unequal'd pain.

Whilst bitter grief and pining woe,
And welcome death at last will show,
How hard their fate who ever prove
The pangs of *disappointed love*.

AN EXERCISE:

Containing a DIALOGUE* and ODE, sacred to the memory of his late gracious majesty GEORGE II.—Performed at the public commencement in the College of Philadelphia, May 1761.

The Ode set to music by F——— H———.

EUGENIO.

WHAT means that look of woe, the head reclin'd,
 Those folded arms with which I meet Amyntor?
 That eye, which wont with love and sparkling joy,
 To beam munificent on ev'ry friend;
 Why bends it thus in sorrow to the ground,
 As if no view could please but dust and earth?

AMYNTOR.

All things, Eugenio, are but dust and earth!
 E'en kings themselves—those demi-gods enthron'd,
 Rulers of empire, thunder-bolts of war,
 At whose avenging nod the guilty tremble,
 Nations are doom'd, and millions live or die—
 E'en kings, themselves, are nought but dust and earth!

EUGENIO.

Who knows not that, Amyntor? But why damp
 This festive day with such untimely lectures?

AMYNTOR.

* The dialogue by the rev. Dr. Smith.

A M Y N T O R.

What festive day can Britain or her sons
 Now celebrate? The voice of joy is fled.
 Let no rash hand with myrtle or with bay,
 Or other flaunting foliage of the grove
 Presume to deck these walls. Come baleful yew,
 And weeping cypress, from your midnight shades!
 None other wreath but your's from hill or dale
 Be pluck'd to circle academic brow.
 See pale *Britannia* on the wave-worn shore,
 Incumbent o'er her massy trident weeps;
 And fond *Érne*, sister of her grief,
 Calls from her harp sad notes of Doric strain.
 From pole to pole, far as old ocean heaves
 His troubled waves, and bears the *British* flag,
 The voice of woe is heard. E'en *here* remote,
 The awful genius of these barbarous woods,
 That wont to roam from *Indian* height to height
 With nature's self, in frolic ever new,
 Tears from his hoary head his feather'd crown,
 And breaks his arrows, and his quiver rends.

E U G E N I O.

In mystic words, and metaphoric strains,
 Why would Amyntor strive to hide the cause
 Of such unbounded sorrow?

A M Y N T O R.

—————No, Eugenio!
 Amyntor would not hide, but speak the cause,
 Could words be found to measure forth his grief,

And

And ease his lab'ring breast. The god-like *George*,
 The friend of freedom, and the scourge of tyrants,
 The father of his country—sleeps in dust ;
 Of import dreadful from Britannia's coast,
 Confirm'd and full, the mournful tidings come.

E U G E N I O.

Illustrious monarch! not the *Roman* boast,
 The gen'rous *Titus*, joy of human kind ;
 Nor names of later date, *William* and *Henry*,
 Or *Alfred's* self, shall fill a brighter page
 In fame's eternal roll, than shall the name
 Of gracious *George*. Beneath his equal sway
Oppression was not ; *Justice* pois'd her scale ;
 No *law* was trampled, and no *right* deny'd :
 The merchant flourish'd, and the peasant smil'd.
 And, oh ! my friend, to what amazing height
 Of sudden grandeur did his nursing care
 Up-raise these colonies ; beyond what'er
 Of ancient or of modern times is told.
 Prepare we then, due elegies to frame,
 Such as may well accord to heart of woe.

A M Y N T O R.

That work is done. Behold the goodly choir,
 With voice united to the deep-ton'd note
 Of swelling organ, rise in act to sing
 The consecrated lay—Hark ! hark ! they strike !—

T H E O D E.

RECITATIVE.

WHY looks the visionary maid so sad,
 Ah! why, *Britannia*, thus in fable clad?
 Oh! speak the cause from whence such sorrows flow,
 That, by partaking, we may ease thy woe.

AIR.

Lend, lend your tears, ye virgin train,
 Let music swell her softest strain!
 Oh! make the solemn dirge resound,
 And spread religious sorrow round—
 With me the deep-felt loss deplore—
 My son! my son! is now no more!

CHORUS.

Then let the solemn dirge begin,
 Whilst we our voices join,
 To swell the tenderest note of grief,
 And mix our woe with thine.

A slow

A flow symphony,

A I R.

The glorious sun, *Britannia's* king;
 Withdraws his golden light :
 His setting ray
 Glides swift away,
 And yields to conq'ring night.

Down in the deep and dreary tomb
 His mortal part must lie ;
 And ev'ry bell
 Now tolls his knell,
 Tears flow from every eye.

Far o'er the wild and wat'ry waste,
 Hear the loud cannons roar ;
 'Till winds convey
 The founds away,
 That die along the shore.

But, lo ! his fainted soul ascends
 High thro' th' etherial road ;
 And *Briton's* sighs
 Like incense rise,
 To waft him to his *God*.

E U G E N I O.

How soft the pow'r of music to assuage
 The pangs of grief ! like balm of costly price
 Pour'd o'er the streaming wound. Since then, my friend,
 Due tribute has been paid to royal worth,

F

And

And royal dust ; it boots us not to spend
Our fleeting hours in unavailing sorrow.
See ! by the bounty of all-ruling heav'n,
Another *George* to happy *Britons* giv'n :
Gay youth and glory beam around his throne,
And glad *Britannia* claims him as her own.
Let us embrace what heav'n in kindness gives,
Since *George* the *Second* in the *Third* still lives.

AN EXERCISE;

Containing a DIALOGUE * and ODE, on the accession of his present gracious majesty GEORGE III.—Performed at a public commencement in the College of Philadelphia, May, 1762.

The Ode set to music by F——— H———.

L O R E N Z O.

ENOUGH, ye sons of science! honours meet
 At your maternal shrine have now been paid.
 From the fair font of *Helicon* divine
 Pure living streams, enraptur'd, have ye drawn,
 Of classic lore, and bade them copious flow,
 To grace the prospects of this festive day.
 Meanwhile, each patriot eye with transport gaz'd;
 Each friend of worth, of science, and of man,
 With cheering smiles their silent plaudit gave.

Say then, my friends, have ye no chaplets weav'd,
 No jocund song prepar'd of sprightliest strain,
 To crown the labours of the learned tribe,
 And sooth with warblings sweet the parting ear?

E U G E N I O.

Yes, my Lorenzo, grateful will we pay

* The dialogue by the rev. Mr. Duché.

All feemly tribute to this glad occasion :
 Nor chaplets gay, nor fong of fprightlieft ftrain
 Will we refuse. See good Amyntor's eye
 Sparkles with joy, and fpeaks fome rapt'rous theme.

A M Y N T O R.

What theme more joyous, or can better fuit
 The glad return of this aufpicious day,
 Than that which occupies my prefent thought,
 And which the faithful index of my heart
 Pointed to thy difcerning?—Know, Eugenio,
 The joy that fports in thy Amyntor's breast,
 And o'er his vifage fpreads this placid fmile,
 Springs from no other fource than the loud fame
 Of his young monarch's worth.—Be this our theme.

E U G E N I O.

And is it thus, Amyntor? ah! how foon
 To founds of grief fucceeds the voice of joy!
 And gilded trappings to the garb of woe.
 Far other fcenes thy lab'ring breast difclos'd,
 When laft I met thee at thefe annual rites:
 With vifage wan, with dark and downward brow,
 When royal duft receiv'd the duteous tear;
 When trembled with the dirge this ftately dome,
 And gloom'd thefe hallow'd walls with wreaths funereal.

A M Y N T O R.

Oh! name it not, my friend! all custom'd dues
 'To majesty entomb'd were then difcharg'd.
 To dwell depending on the mournful theme,

Or hang like statues o'er the kingly urn,
 Pale, motionless as marble; this were impious;
 A censure weak and rash of heav'n's decree.
 Shout then, ye favour'd race, ye sons of freedom,
 Bound ev'ry heart with joy, and ev'ry breast
 Pour the warm tribute of a grateful praise!
 For o'er the realms of *Britain* reigns supreme
 The darling of his people, *George* the Good.
 Bright clust'ring round his throne the virtues stand
 In meet array, obsequious at his call,
 To fly, triumphant, thro' his wide domain,
 And deal their salutary influence round.

L O R E N Z O.

Thrice happy monarch! skill'd in ev'ry art
 To win a nation's finile, and fix their love.
 Thy youthful blossoms are the earnest sure
 Of future glories to thy native land.
 Hence, in the mighty rolls of *British* fame,
 Thy reign shall shine distinguish'd mid the rest,
 By deeds of valour, piety, and love.

A M Y N T O R.

Nor only in the sphere of royalty,
 The wise exertions of his kingly pow'r,
 Doth *George* illustrious move: each milder virtue,
 Each soft endearing scene of private life
 His tender soul embraces: modest worth,
 Grace unaffected, true simplicity,
 With dignity combin'd, each nameless joy
 That *Hymen* twines around his filken bands,

He meets with transport in his *Charlotte's* arms,
The pleasing partner of his heart and throne.

But let us not in fond and growing parley
Thus waste the day.—Begin ye choral band,
For whom the festive song hath ben prepar'd,
And with loud *Pœans* rend the vaulted roof.

T H E O D E.

BRIGHT ascending to the skies,
See *Britannia's* glory rise!
Cease your sorrows, cease your fears,
Night recedes and day appears;
Another *George* majestic fills her throne,
And glad *Britannia* calls him all her own.

C H O R U S.

Let the tuneful chorus join,
And high their voices raise,
To celebrate in notes divine,
The *youthful* monarchs praise.

A I R.

Rejoicing science with each polish'd art,
Beneath his reign shall with success conspire
To form the manners, humanize the heart,
And virtuous thoughts, and virtuous deeds inspire.

II.

The sweets of liberty shall care beguile,
 And justice still her happy influence spread,
 Religion cheer him with a sacred smile,
 And bid the crown fit lightly on his head.

CHORUS.

Let the tuneful chorus join,
 And high their voices raise,
 To celebrate in notes divine
 The *pious* monarch's praise.

AIR.

See resplendent at his side,
 Joyful sits his royal bride:
 Glowing youth and beauty join
 To make the fair conspicuous shine:
 Ev'ry virtue warms her breast—
 How is *Britain's* monarch blest!
 Unfulfilled bliss shall crown the royal pair,
 The *good* and *great* are heav'n's peculiar care.

CHORUS.

Let the tuneful chorus join,
 And high their voices raise,
 To celebrate in notes divine
 The *happy* monarch's praise.

AIR.

Rough war shall humbly at his feet
 Her bloody laurels lay;

Him

Him gentle peace shall kindly greet,
 And smile beneath his sway.

II.

Hail ! *Britain*, hail ! these golden days ;
 Illustrious shalt thou shine ;
 For GEORGE shall gain immortal praise,
 And, *Britain*, GEORGE is thine.
 To distant time he shall extend his name,
 And give thy glories to a deathless fame.

CHORUS,

Let the tuneful chorus join,
 And high their voices raise,
 To celebrate in notes divine,
 The *British* monarch's praise.

A N O D E

Designed for a public commencement in the college of
Philadelphia.

RECITATIVE.

WHEN heav'n spreads blessings with unsparring hand,
And smiling plenty crowns the joyful land,
The happy peafants tune their rustic lay,
And back to heav'n their grateful tribute pay:
And shall not we enraptur'd snatch the lyre,
And fing to ftrains which thankful hearts inspire,
When heav'n confents, and men unite to blefs
This feat of fcience with enfur'd fuccefs ?

CHORUS.

Rife ! rife ! ye fons of fcience, rife !
Your loudeft ftrains employ ;
With glowing fire,
Attune the lyre
To gratitude and joy.

AIR.

Hail to the king ! whofe virtuous heart
Direfts his lib'ral hand,

To

* His gracious majefty George III. who granted a brief for making a collection through the kingdoms of England, Scotland and Ireland, for the benefit of this institution.

To stretch o'er wide extending seas,
 And bless a distant land.
 Oh! let the num'rous throng that daily prove
 The sweet effects of his paternal love,
 Unite their hearts in one accord and sing
 In acclamations loud, *Hail to the king!*

CHORUS.

Rise! rise! ye sons of science, rise!
 Your loudest strains employ;
 With glowing fire,
 Attune the lyre
 To gratitude and joy.

AIR.

* A gen'rous throng demands our love,
 Who in a desert wild,
 Heard infant science cry for help,
 And nurs'd the drooping child:
 Tho' men forget, heav'n will the deed record,
 And to their race extend the blest reward.

CHORUS.

Rise! rise! ye sons of science, rise!
 Your loudest strains employ;
 With glowing fire,
 Attune the lyre
 To gratitude and joy.

AIR.

* The many benefactors who freely contributed on this occasion.

AIR.

And can the muse forget his * toil,
 Who compass'd sea and land
 To rear the tender plant which oft
 Had felt his pruning hand ?
 Oh ! let his care and unexampled love,
 Our just returns of warm affection move !

CHORUS.

Rise ! rise ! ye sons of science, rise !
 Your loudest strains employ ;
 With glowing fire,
 Attune the lyre
 To gratitude and joy.

SCIENCE,

* The rev. Dr. Smith, who carried about the brief and received the contributions.

S C I E N C E ; A P O E M.

Humblly inscribed to the *Trustees, Provoost, Vice Provoost, and Professors*
in the College and Academy of PHILADELPHIA.

*Doctrina sed vim promovet instans,
Reâique cultus pectora roborant.*

H O R.

1762.

D E D I C A T I O N.

To the *Trustees, Provoost, Vice Provoost, &c.*

GENTLEMEN,

It is not without great expectations from your candour and indulgence that I am encouraged to lay this little Poem at your feet.

I do not flatter myself that your institution will hereby gain any additional lustre, but I would take this opportunity of publicly acknowledging my affection and gratitude to that seat of *Science*.

May all your undertakings for its advancement meet with more than expected success; and may it never want friends to support it with equal zeal, but greater abilities, than I can boast.

I am, Gentlemen,
Your much obliged
And humble servant,

T. H.

S C I E N C E ;

SCIENCE; A POEM.

GODDESS sublime! on whose advent'rous wing,
 Like the sweet lark, fleet fancy mounts to sing;
 Whether it chance to please thee, youthful queen,
 With airy step to grace the rural scene;
 Or softly languish thro' the breezy grove,
 In all the dying tenderness of love:
 Whether thro' some untrodden flow'ry way,
 With contemplation mild, thou lov'st to stray;
 Or on a tempest's rapid fury rise,
 And dip thy plumage in the wat'ry skies;
 Or moon-light wand'ring by the wave worn shore
 Wait on old *Ocean's* melancholy roar:
 Where'er thou art, once more my pray'r attend;
 Once more celestial muse thy influence lend.

Fair science soft'ning with reforming hand,
 The native rudeness of a barbarous land:
 Her radiant throne uprais'd by pow'r divine,
 Her num'rous sons low bending at her shrine.
 Joyful I sing—oh! may my numbers seem
 To flow inspir'd, and equal to my theme.

Ye *friends of learning*, patronize my song,
 To you the tributary strains belong :
 But chiefly*, *thou* beneath whose gentle sway
 The muse delights to tune her grateful lay :
 Glad science, thee, shall her Mæcenus hail,
 Wisdom shall simile and heav'nly truth prevail !
 In yonder dome—it boasts no pompous name,
 Yet not the less shall fill the page of fame,
 Bright science dwells—how honour'd the retreat,
 Where science deigns to fix her fav'rite seat.
 High from the throne she beams celestial day ;
 And distant lands confess th' enliv'ning ray :
 The graces ever in her presence stand
 And virtue blooms beneath her nursing hand.

There first her youthful vot'ry learns to please
 By just expression and becoming ease—
 Delightful task, with early care to teach
 The lisping tongue propriety of speech.
 See on the stage the little hero stands,
 With eyes uplifted, with extended hands :
 Or from his lips Pope's liquid numbers flow,
 In streams mellifluous—See the conscious glow
 Burns on his cheek—perhaps the strains inspire
 The infant raptures of poetic fire :
 Perhaps 'tis modesty, with native grace,
 Calls forth the roses in his youthful face :

Or

* The honourable James Hamilton, Esq. Lieutenant Governor of the province of Pennsylvania.

O' now the force of eloquence he tries,
 And attic light'nings kindle in his eyes.
 Methinks I see the deep touch'd senate glow
 While mimic thunders threaten from his brow ;
 Or now his gentle voice in borrow'd lays,
 Swells the smooth tribute of his Maker's praise :
 See the warm ardor of the faint express'd,
 As if the numbers fir'd his little breast :
 What joy to hear ; what raptures to behold,
 The youthful bard, so graceful and so bold :
 In virtues cause—bright truth shall soon inspire
 The living ardors of a real fire.

But now glad science to his riper age
 Unfolds the treasures of the classic page :
 Sweet *Heliconian* draughts enrich his soul ;
 From the pure stream he drinks without controul.
Virgil for him awakes the tuneful lyre,
 And lavish *Pindar* pow'rs forth all his fire.
 Pious *Æneas*, who attends thy woe
 But deeply feels the sympathetic glow !
 Thro' ev'ry page engaging virtues shine,
 And frequent precepts grace each moral line:
 Whilst *Horace* leads the lyric muse along
 With careless ease attunes the pleasing song ;
 Th' unlabour'd thought harmoniously express'd,
 Gives gayer transport to the youthful breast :
Homer more boldly strikes the epic string ;
 Swift are we borne upon his rapid wing,
 Where bleeding heroes stain th' ensanguin'd ground,
 And angry gods are heard in thunder round.

And now advanc'd the student loves t'engage;
 More arduous heights—the mathematic page
 Invites his riper judgment to explore,
 The mazy windings of her subtle lore:
 The pleasing toil delights th' enquiring youth,
 And science guides him to th' entangled truth.

At length behold to his astonish'd eye,
Nature's vast volume all expanded lye;
 From the effect he seeks the hidden cause,
 And deeply searches her mysterious laws.
 Earth, air, nor sea, nor heav'ns extended space
 Can bound the reach of man's aspiring race;
 Upward he lifts the astronomic eye,
 Surveys those orbs of light that roll on high:
 Mid sun's and blazing stars he dares to rove,
 And learn th' important laws by which they move:
 Sits in the centre, wrapt in thought profound,
 And views the radiant system rolling round.
 To reason's eye there shall the cause appear,
 Why various seasons form the changing year:
 Spring first in mantle green and garlands gay,
 Sweet smelling as she passes, leads the way.
 With breezy call awakes each rural sound,
 And fills with music woods and valleys round:
 Then *Summer* comes light clad in glowing red,
 Whilst the thick foliage nods around her head:
 With lavish bounty from her lap she pours,
 Luxuriant gifts of herbage, fruits and flow'rs.
 In yellow garb see *Autumn* next appear,
 To crown with plenty the rejoicing year:

O'er new reap'd fields with airy steps she roves,
 And paints in various hue the fading groves.
 Then boisterous *Winter* howls along the plain,
 Affrighted vegetation shrinks again
 Back into earth ; woods, hills, and valleys stand
 Strip'd of their pride by his relentless hand :
 In icy bonds he holds the water's fall,
 And in his snowy mantle wraps them all.

Thus shall his eye important truths pursue,
 And in his works the *Great Creator* view :
 The birds on pointed pinions mounting high,
 That pour shrill music from the azure sky ;
 The fish that sporting in the lucid stream,
 Swift glide and glitter to the sun's bright beam ;
 The herbs medicinal that strew the ground ;
 The varied flow'rs that bloom spontaneous round ;
 The grove, high waving, the green tufted dale,
 The pearl deck'd grotto, the sequester'd vale ;
 All must the philosophic bosom move,
 To wonder, gratitude, and glowing love.

But now the pupil takes his boldest flight ;
 See adventurous *him*, climb the tow'ring height,
 Of *Ethic* learning—more extensive fields,
 Views more enlarg'd, the boundless prospect yields.
 His searches now pursue a nobler plan,
 Now comes that grand enquiry *what is man* ?
 How form'd ? by whom ? thence shall he learn to know
 From his *connections* what great *duties* flow.

What pow'rs are giv'n those *duties* to fulfill ;
 How form the *judgment* ; how direct the *will* ;
 When *passion* to indulge, when to refrain ;
 And how his *happiness supreme* obtain ;
 What is the nature of his nobler part ;
 Why with ambition throbs his anxious heart ;
 To draw the mid-night curtains of the tomb,
 And look for *judgment* and a *world to come*.

From such pursuits what great ideas flow ?
 See in his visage conscious virtue glow :
 His views enlarge, enlighten'd is his mind ;
 More warm his heart, his passions more refin'd :
Religion kindles her celestial ray,
 And truth breaks on him in a flood of day !

Pierian muse ! thy favour still prolong
 And let thy presence animate my song !

Now *science* joys to call the youth her own
 And crowns with laurel her adopted son :
 His *Alma mater* now prepares to shed,
 Her rich rewards on his distinguish'd head :
 The vaulted hall the rising anthems rend,
 And pressing crowds the solemn rite attend :
 Prepar'd for action now he takes the field,
 And speculation must to practice yield.
 High on the stage, and graceful to the view,
 " Adieu dear seat of bliss, he cries adieu ;"

Pathetic sorrows in his bosom swell,
And with reluctant voice he sighs a last farewell.

What means my trembling pulse and throbbing breast?
Why is the scene to me so strong express'd?

Fancy again renews the awful rite;

Th' encircling audience swims before my sight;

Once more my heart beats quick with anxious fear:

Once more methinks the solemn charge I hear—

“ * Go forth my sons, our first, our early pride,

“ Thro' life's dark maze be virtue still your guide;

“ Without *religion*, *learning* is but vain,

“ And fruitless toil philosophy to gain:

“ 'Tis not sufficient that what's right you know,

“ Your conduct ever should your knowledge show:

“ Should injur'd freedom for assistance cry,

“ Nor eye, nor ear, nor hand, nor heart deny;

“ With pious zeal up raise her drooping head!

“ There's nought but *vice* and *tyranny* to dread.”

Blest institution, nurse of Liberty!

My heart, my grateful heart, shall glow for thee:

No common pride I boast, no common joy,

That thy instructions did my youth employ.

Tho' not the *first* amongst thy sons I prove,

Yet well I feel I'm not the *last* in love.

Oh! may thy sacred influence never cease,

But in secure prosperity increase!

* This passage alludes to the charge delivered by the provost to first candidates for degrees in the college, amongst whom the author was one.

It must be so, prophetic fancy cries ;
 See other *Newton's* other *Shakespeare's* rife ;
 Each sage philosopher, each learn'd divine
 And patriot worthies an illustrious line :
 All those who nobly fill Fame's ample page,
 Again revive to grace a future age.—
 Blest institution ! hail, methinks I see
 The shining throng ascribe their birth to *thee*.
 Thou, *Schuylkill*, from whose cliffs I love to view,
 Thy gurgling stream its rocky way pursue,
 Shalt own the change: the savage yell no more
 With fearful sounds shall rend thy rugged shore :
 Oh ! let thy groves their richest beauties wear,
 And for approaching happier times prepare.
 Along thy banks the pensive bard shall stray ;
 Sweep the sweet lyre, and wake the tuneful lay :
 Echo shall love to catch the pleasing sound,
 And bid it soften all thy rocks around :
 Ev'n now thy flow'ry paths I see him tread,
 And pluck thy laurels to adorn his head ;
 How shall thy waves elate flow proudly by,
 And grow more turgid but to catch his eye ?
 How shall thy rural scenes bloom in his song,
 And each romantic height his strains prolong ?
 Then whilst his breast with sacred ardor burns,
Religion, Justice, Liberty by turns ;
 And science too, in more harmonious strains,
 Shall sweetly warble to the hills and plains :
 Perhaps the bard, when highest noon prevails,
 Beneath some shade shall court refreshing gales ;

And whilst his wand'ring fancy roves more free,
 May chance to think of earlier times and *me*.
 Presumptuous thought, shall my unpolish'd lay,
 Be borne in safety down time's rapid way ?
 The dang'rous rocks of *criticism* fly,
 And fearless pass *Oblivion's* quick sands by ?
 Enough for me, if with the least regard,
 The * friends of science should my song reward ;
 No speedy death my artless strains shall know,
 Not without honour will my numbers flow,
 If with indulgence, *they* should not refuse,
 To smile propitious on my humble muse.

* The trustees of the college.

A MORN-

A MORNING HYMN.

ONCE more the rising source of day,
 Pours on the earth his genial ray :
 Withdraws the starry veil of night,
 And smiles on ev'ry mountain height.

Once more my soul, thy song prepare,
 Thy *God* approach in praise and pray'r ;
 With early voice salute the skies,
 And on the lark's fleet pinions rise.

This hand did me from danger keep
 When nature lay entranc'd in sleep :
 When ev'ry sense forsook its post,
 And reason's guardian pow'r was lost.

Soon as dark night o'er spreads the skies,
 Co'ds mists and drowfy damps arise :
 Contagious steams their confines break,
 And slumber o'er the sluggish lake.

Loud shrieks the melancholy owl,
 And prowling wolves thro' deserts howl ;
 The fancied spectre glides the green,
 And midnight murder walks unseen

Forlorn the wearied wand'rer strays,
 Lost in a labyrinthian maze ;
 Where'er he treads, is danger there,
 And his foul sickens in despair.

Whilst slumbers soft my eye-lids close,
 And golden dreams and sweet repose,
 Wear the sad hours of night away,
 And hasten on the chearful day.

My God ! shall not such goodness move
 My soul to gratitude and love ?
 Or shall my heart forget to raise,
 Her loud hosannahs to thy praise ?

When shall my eager spirit rise,
 And soar above these floating skies ?
 Oh ! when with hosts seraphic join,
 To sing thy majesty divine ?

In realms where no returns of night,
 Shall e'er the tim'rous soul affright ?
 But one eternal blaze of day,
 Shines forth with unremitting ray ?

AN EVENING HYMN.

AT length the busy day is done,
 And yon bright orb, the glorious sun,
 Deep in the west reclines his head,
 Where mifty curtains shroud his bed.

Oh! God of hosts! with this day's close,
 How many sleep in death's repose?
 And with the sinking sun's decline,
 To thee their fleeting souls resign.

Hark! 'tis the tolling bell I hear,
 And slow and dull it strikes mine ear:
 E'en whilst I tune my pensive song,
 The solemn fun'ral moves along.

He whom this night th' expecting tomb,
 Shall wrap within its dreary gloom,
 At yester-morn, devoid of care,
 Up rose and breath'd the healthful air.

Gay Hope o'er look'd the present day,
 Prospects of years before him lay;

He

He haften'd to distant joys meet,
Nor saw the grave yawn at his feet.

Ambition, stop thy mad career,
Look on that corse and drop a tear ;
E'en when thy hand would grasp the prize,
The stroke is giv'n, and glory dies.

Let *Avarice*, feeble, grey and old,
Whilst his broad palm protects his gold,
Lift up his eyes, and sighing say,
Death is a debt we all must pay.

Let thoughtless youth, too often found,
In *sensual joy's* enchanting round,
Behold, and as he trembling stands,
Let Pleasure's cup fall from his hands.

And thou my soul thy thoughts employ,
On *God* thy glory, wealth and joy :
Virtue alone is stable here,
Nought but religion is sincere.

When mortal pangs his frame shall seize,
And the chill'd blood begins to freeze ;
When my fixt eyes must roll no more,
And life escapes thro' ev'ry pore.

Ah ! what shall cheer my drooping heart.
Shall worldly honours joy impart ?

With

Can sensual pleasure sweeten death,
Or wealth redeem one parting breath ?

Therefore, my soul, thy thoughts employ,
On *God*, thy *Glory*, *wealth* and joy :
Virtue alone is stable here,
Nought but religion is sincere.

T O R O S A L I N D A,

ON HER BIRTH DAY.

WELCAME! ye glories of the eastern sky!
 Blest be the dawn of this propitious day!
 Oh! let the muse her willing strains employ,
 And chearful swell the tributary lay.

This happy morn gave the rejoicing earth
 A treasure great as could the heav'ns bestow,
 This happy morn gave Rosalinda birth—
 Cease, cease ye floods, ye tempests, cease to blow.

Come gentle spring, like Rosalinda fair,
 Like her advance, and brighten ev'ry scene:
 Shed all thy odours in the ambient air,
 And far abroad extend thy mantle green.

Like Rosalinda come, the source of joy!
 Let nature smile, and all the world be gay:
 Let ev'ry muse her willing strains employ,
 To hail the spring, and Rosalinda's day.

T O R O S A L I N D A,

ON HER BIRTH DAY.

HAIL ! facred morn ! the muse's lay
 Once more salutes thy rising ray :
 Hail ! blessed morn ! thy deathless fame
 Shall live in Rosalinda's name.

Dark was the sky, and thro' the night
 The tempest wing'd its rapid flight ;
 The forest herds in caverns lay,
 And look'd and long'd for light and day.

With glory crown'd, at length was seen
 Thy happy dawn, mild and serene ;
 Diffusive radiance paints thy sky,
 And gilds Norwedian hills with joy.

Then came with thee fair Rosalind ;
 And came, like thee, to bless mankind :
 The storms are hush'd, the muses sing,
 And soon arose the jocund spring.

The feather'd choirs from ev'ry tree,
 My *Rosalinda*, welcome thee ;

With

With them on this auspicious day,
Oh! let me join my annual lay.

The morn gave lustre to thy face,
The gentle spring, each winning grace;
Thus morn and spring their beauties join'd,
And gave the world fair *Rosalind*.

T O R O S A L I N D A,

ON HER BIRTH DAY.

THE wafing tide flow ebbing from her fhore,
 Wave after wave reluctant forc'd away,
 Down to her channel fhinks, as if no more
 Old ocean would her borrow'd ftream repay.

But foon the waters with impatient flow,
 O'er the broad ftand in fprightly murmurs glide;
 From the green bank the fedges ftrooping low,
 With eager joy kifs the returning tide.

But time his ever ebbing courfe purfues
 Along eternity, that boundlefs fhore ;
 No kind reflux the wafing ftream renews ;
 The moment wave, once fpent, recoils no more.

Life is a narrow fpan contracting faft ;
 And yet the anxious heart, or preft with fear,
 Would make it lefs, and wifh the prefent paft ;
 Or hope would bring fome diftant period near.

Time is the great deceiver of mankind,
 Each day fome long expected joy beguiles ;

Each

Each day some new created hope we find,
Rising to view, and still the prospect smiles.

This, gentle *Rosalinda*, is thy day,
And claims the annual tribute of my song:
Kindly accept the muse's moral lay,
For moral subjects should to thee belong.

Thrice happy they, who like thee, timely wife,
See years expire, and see without alarm;
To thee each birth day shall serenely rise,
To fix some virtue, or improve some charm.

The glow of modesty shall paint thy face;
Fair innocence, thy days with peace shall crown;
Gay wit shall heighten ev'ry sprightly grace,
And mild religion lead thee gently on.

Till tir'd of life, thou shalt this life resign,
And rise a seraph from a sleeping fair
To heav'n—where angels with their harps divine
Shall celebrate thy happier birth-day there.

E X T E M P O R E V E R S E S

FROM THE TOP OF MOUNT PARNASSUS, A LOFTY
HILL IN LANCASTER COUNTY.

ONCE more my heart dilates with joy,
To climb this craggy height ;
To yonder distant hills once more
I stretch my ravish'd fight.

The known delight my bosom feels
Parnassian ground to tread ;
And where the purest æther floats,
I'll raise my lofty head.

Fair *Rosalinda* standing by,
Assists my flowing song,
And passing gales thro' waving groves,
Shall bear my strains along.

She is my muse, and doth my soul
With glowing thoughts inspire :
Her cheering smiles shall make me feel
More than a poet's fire.

With anxious care, let others strive
Uncertain bliss to find,

And

And for expected wealth and fame
Resign their peace of mind.

In some such blest retreat as this,
Let me my hours employ,
And *Rosalinda* still be near,
To brighten ev'ry joy.

H

DIRTILLA,

DIRTILLA, A POEM.

THOU goddess fable clad, *Dirtilla*, hail!
 Thee I invoke to aid my daring muse,
 To rise with footy wing and sing thy praise.
 Ne'er yet attempted by advent'rous bard.
 Thee I invoke—whether thou lov'st to shew
 Thy marbled visage in the troubled pool,
 Or spread'st thy bounty o'er the smutted face
 Of chimney sweeping elf; or o'er the plain,
 Rolling in clouds by summer breezes born,
 Salute the traveller in shape of dust:
 Whether in furnace or in noisy forge,
 With fiend-like colliers thou vouchsafest to dwell,
 And sit with Vulcan thy co-equal reign;
 Or soft recline upon a scullion's lap,
 Or on the school-boys jacket smile serene.

Rebellious beaux, and washer-women strive,
 But strive in vain with never ending war
 To overcome thy pow'r—still thou return'st,
 And still they labour on with fruitless toil,
 Sworn foes to thee, thou sober-visag'd dame;
 Not so thy bard—full well he knows to gain;
 And having gain'd, thy favour still to keep,
 E'en now wide spreading o'er my honour'd coat

Full many a spot, full many a greasy smear,
 Thy influence benign and pow'r declare ;
 Driving for thence, of new impressed cloth
 The gawdy glare—ne'er to return again.

Oh ! mortals blind to truth, whose anxious souls
 Impatient wait, till from the taylor's hand,
 The sumptuous garb, long look'd for, comes complete.
 Success no sooner crowns their wearied hope,
 But, new distractions fill their troubled mind,
 And cloud their joy ; left, in some guardless hour,
 A dreaded spot should fully all their pride.

See at the festive board in new brocade
 And lawn, as yet unstain'd, Sophronia fits :
 In vain rich wines of various fort and hue,
 In order rang'd, the glitt'ring side-boards grace ;
 And pleafant viands smoke in vain around :
 Nor these, nor yet th'exhilarating song,
 Or needle point of stimulating wit,
 Provoke to joy her ever anxious heart ;
 Should the rude servant with unhallow'd foot,
 And overflowing glass, approach too near
 The magic circle of her spreading robe :
 Her eager hands collect the darling silk
 In closer folds, and in her sparkling eye
 New lightnings kindle at the bold assault.

Thus have I seen within some farmer's yard,
 Whilst busy Partlet for her chirping brood
 The dunghill scratch'd ; to them a mine of wealth :

Should fierce grimalkin from beneath the mow,
 Or neighb'ring barn, creep fly with deadly paw:
 Alarm'd, she gathers all her little train
 Beneath her shelt'ring wings: she swells with rage,
 And brist'ling feathers awe the daring foe.

Oh! goddess most benign, beneath thy sway,
 I eat and drink with pleasure unallay'd;
 Nor care I ought, if from the dripping spoon,
 The falling drops enrich my fullied garb:
 Oh! could I like *Lunanius* boast thy love,
 Thy fav'rite vot'ry *be*, far, far beyond
 My utmost reach, my greatest hope aspires.
 His honour'd chamber thou vouchsaf'ft to make
 Thy chosen seat, thy undisturb'd abode;
 Where never broom thy ministers annoy,
 But spiders, white with age, their webs extend
 And see their num'rous offspring do the same.
 Methinks I see him seated on the floor,
 With all his dirty papers scatter'd round;
 While lengthen'd cobwebs from the ceiling's height,
 Hang pendant o'er his head in waving rows.
 Not such as Betty from the parlour sweeps
 With nimble hand: but such as oft are found
 In dungeons deep, black with the dust of years.
 Methinks I see upon his broken hearth,
 On either side, a heap of ashes rise:
 The sad remains of a whole winter's fire:
 Nor would he yield them to the chandler's pence.
 For they, oh! curst art; by dire process,
 Would soon convert them into cleansing soap.

And

And here, a kettle stands, which never felt
 The wasting torture of a scullion's hand ;
 Impenetrable crusts guard it without,
 And scale on scale the solid sediment
 Of constant use, uncleans'd, line it within ;
 And there a Delphin mug, embossed once
 With many a winding leaf and op'ning flow'r,
 Of which no traces now are to be found,
 Obliterated all with harden'd grime.

But, above all, methinks I see his bed,
 The throne, oh ! goddess ! where thou reign'st supreme ;
 The tester bends beneath the load of dust,
 Which time hath scatter'd with unsparing hand,
 And curtains, tawny, with incessant smoke,
 Hang graceful round in many a smutted fold.
 To shake the bed, or cleanse the tott'ring frame,
 On which it lies, no hand hath yet presum'd ;
 But unmolested myriads wanton there.
 Thus lives *Lunanius* ; nor can ought avail
 To move his firm allegiance unto thee,
 And may'st thou, goddess, e'er such vot'ries find :

Wrapt in prophetic vision, I behold
 The times approach, when all thy foes,
 Humbled in dust, shall own thy gen'ral sway :
 For well we know, that all things are but dirt—
 And beaux and belles, and all the soapy train
 Of washing-women, and of scouring men,
 Must yield to thee, and into *dust* return.

A S E N T I M E N T :

Occasioned by a conversation with Mr. P—— M——, one of the principal men among the Christian Society, called DUNKARS, at EPHRATA, in the province of PENNSYLVANIA.

THE Lord Supreme, from his exalted throne
 Surveys at once earth, heav'n, and worlds unknown ;
 All things existing must before his eye
 Like the plain tracings of a picture lie :
 Unutter'd thoughts deep in the heart conceal'd,
 In strong expression stand to him reveal'd.
 Thousands, and twice ten thousands ev'ry day,
 To him or feign'd or real homage pay :
 Like clouds of incense rolling to the skies,
 In various forms their supplications rise ;
 Their various forms with him can nought avail,
 The secret motives only will prevail ;
 And the true source of ev'ry offer'd pray'r,
 To his all-searching eye must plain appear.

Some place religion on a throne superb,
 And deck with jewels her resplendant garb :
 Painting and sculpture all their art display,
 And lofty tapers dart their lucid ray :
 High on the full-ton'd organ's buoyant sound,
 The pleasing anthem floats serenely round :

Harmonic

Harmonic strains their thrilling pow'rs combine,
And lift the soul to ecstacy divine.

Deep in *Ephrata's* gloom *you* fix your feat,
And seek *religion* in the dark retreat :
In fable weeds you dress the heav'n-born maid,
And place her pensive in the lonely shade :
Recluse, unsocial *you*, your hours employ,
And fearful, banish ev'ry harmless joy.

Each may be right in their peculiar way,
If proper motives should their worship sway :
If but the *love divine of God* is there,
The spirit genuine of unfeigned pray'r ;
'Tis true devotion ; and the Lord of love
Such pray'rs and praises kindly will approve.
Whether from golden altars they should rise,
And wrapt in sound, roll to the lofty skies,
Or from *Ephrata's* feat, so meek, so low,
The soft and silent aspirations flow.

Oh ! let the *Christian* bless that glorious day,
When outward forms shall all be done away ;
When we in spirit and in truth alone
Shall bend oh ! God ! before thy awful throne ;
When thou our purer worship shalt approve,
And make returns of everlasting love.

THE TREATY; A POEM*,

Humbly inscribed to the honourable THOMAS and RICHARD
PENN, proprietors of the province of Pennsylvania.

'MID the deep murmur of luxuriant groves,
Waving o'er Lehigh's sylvan painted stream,
All fancy-fir'd, the muse retiring loves
Lonely to rove, wrapt in poetic theme.
Serpentine waters with majestic flow,
Now lost—now shining, lead th' astonish'd eye,
To distant scenes where endless forests grow,
And dusky mountains melt into the sky.
Gushing abruptly from between the hills
Far off is heard the plunging torrent's roar;
From massy rocks here the cool stream distills,
And gentle dashings sound along the shore.
The gay musicians of the groves around,
In cadence sweet attune their warbling song;
'Their warbling song the darksome caves resound,
And light-wing'd breezes bear the strains along.

Here

* This poem was written upon the banks of the river Lehigh, in the year 1761, when the author served as secretary in a solemn conference held between the government of Pennsylvania and the chiefs of several Indian nations.

Here never bard hath swell'd th' harmonic lay,
 Then let me eager to the bliss aspire
 The first, ye rocks! to hear your echoes play,
 Your virgin echoes to the dulcet lyre.

For thee, illustrious Penn! my song I raise,
 Oh! let the muse thy wonted favour claim:
 For thee I lonely tread the rustling maze,
 And bid *thy* woods resound their master's name.

With rigid sway too long hath ign'rance reign'd,
 And spread her gloom o'er this benighted land:
 These solemn groves too oft with blood been stain'd,
 Shed by barbarian's unrelenting hand.
 Witness, ye ghosts! that to the waning moon,
 Join, with the owl, shrill shrieks and plaintive moan;
 Witness ye innocents, by fate too soon
 Condemn'd beneath a savage yoke to groan
 —Here pause a-while!—these grass-grown ruins view,
 They call attention; they implore a tear!
 These once the sound of social converse knew,
 And peace, content, and jollity were here.
 Alas! how chang'd! the hospitable hearth
 No more shall blaze to cheer the evening friend:
 No more inspire the roar of rustic mirth,
 When, with the setting day, its labours end.—
 Alas! how chang'd! what a confused mass,
 The scatter'd ruins of the cottage lie!
 Here hissing serpents slide along the grass,
 And here the owl lifts her distressful cry.
 As calm and still the peaceful household lay,
 At dead of night a savage yell was heard;

Affright'd sleep wing'd her aerial way,
 And death in horror's darkeſt robe appear'd.
 Warm from the father's wound the reeking blade
 With mortal point hangs o'er the mother's breaſt :
 Vain are her cries, her loudeſt cries for aid ;
 She groans in agony and ſinks to reſt.
 A fate more hard the little offspring know ;
 Thro' breaks and thorns they tread their weary way,
 Their guides, upitying, urge their ſteps, too ſlow ;
 And chide them oft as thro' the wild they ſtray.

How ſhall the muſe, oh ! thou ill-fated fair !
 In numbers equal to thy weight of woe,
 Thy ſad diſtreſs, thy lot ſevere declare,
 And bid for thee the tears of pity flow !

Rofetta, faireſt maid that grac'd the plains,
 Of all the village long remain'd the boaſt,
 Struck with her lovely form contending ſwains,
 Were daily ſtriving who ſhould pleaſe her moſt :
 But happy *Doris*, with his gentle mien,
 Had won her heart, the ſoft relenting fair,
 Oft met her faithful ſhepherd on the green,
 And *Doris* breath'd his tender paſſion there.
 One eve, *Rofetta* from the cottage ſtray'd,
 To ſeek a wand'ring lambkin of her fold,
 A mercileſs troop ſeiz'd the unwary maid,
 And graſp'd her, trembling, in their ſavage hold.
 Full of fond hopes as *Doris* paſſing by,
 Purſued his way, contemplative and ſlow,
 Amaz'd he heard his fair one's well known cry,
 And, fearleſs, ruſh'd upon the num'rous foe ;

Long did the youth th' unequal fight maintain;
But what, alas ! could valour then avail ?

An *Alexander* must have strove in vain,
Superior force and numbers will prevail.

The captive lovers lock'd in close embrace,
With silent tears their mutual grief express :
The tawny victors haste to leave the place,
Unmov'd, unpitying of their sad distress.
Two parties form'd, one takes the weeping fair,
The other *Doris* for their easy prize ;
A silent gloom shuts in *his* dark despair ;
The woods re-echo to her mournful cries.

Six times the moon her fullest orb had shown,
Since sad *Rosetta* with incessant grief,
Had mourn'd her liberty and lover gone,
Without one cheering prospect of relief,
Forc'd from her hospitable home to stray,
O'r craggy rocks her tender feet must go ;
'Thro' the sharp thorns she makes her gloomy way
And bears about a constant load of woe.
Oft times when shiv'ring in th' inclement air,
On the damp ground she sought for lost repose ;
Her mother's fondness and her father's care,
And *Doris's* love to sad remembrance rose.

At length the chiefs a solemn feast prepare,
And gather num'rous from the nations round ;
Each brings his spoils of war, and pris'ners there,
And thro' the woods triumphant echoes sound.

A horrid tragedy must now succeed,
 My swelling heart beats quick within my breast;
 How shall the sympathizing muse proceed
 To dip her hand in blood, and paint the rest?
 Six tawny heroes in their battles slain,
 Sully the lustre of their festive day;
 For them six captives with tormenting pain,
 Must yield their lives the fatal debt to pay.

Aborb'd in sorrow on a turf reclin'd!
Rosetta lay, all wan with wasting grief;
 Her lot severe, she ponder'd in her mind,
 And look'd from death alone to find relief—
 She starts alarmed at a sudden cry,
 The well known voice of *Doris* strikes her ear,
 Half-rais'd she looks around with tearful eye,
 To see if much lov'd *Doris* was not near:
 Oh! mournful object for a soul distress!
 Fast to a tree she sees her shepherd bound:
 A mortal arrow planted at his breast,
 And his life bubbling from the recent wound!
 Struck with an instant frenzy of despair,
 Thro' all her frame she feels the chill of death;
 Flies to her just expiring love, and there
 Sinks at his feet with closing eyes, and sighs her latest breath.

But cease my muse, such tragic scenes no more,
 From pity's eye shall draw the tender tear;
 Heav'n shall our interrupted peace restore,
 And with the danger banish all the fear.

All hail ! the dawn of more enlighten'd days !
 Accept, great *Penn*, the praise to merit due ;
 The angel peace, her olive wreath displays,
 And smiling, as she rises, points to you.

When the fam'd *Cortes* to his monarch gave
 Another empire in a distant land,
 He bore his thunders thro' the foaming wave,
 And fatal steel gleam'd dreadful in his hand.
 Nor pity mov'd, nor justice sway'd his breast ;
 To fraud or force the injur'd natives yield ;
 Low in the dust he treads the warrior's crest,
 And stands triumphant in a bloody field.

Not so the gentler patron of distress,
 By lawless force would large possessions gain :
 Illustrious *Penn* ! still be it thine to bless,
 Not to inflict unnecessary pain.
 Thine is the skill in soft encircling chains
 Of justice, truth, and charity to bind
 The hand that spreads destruction round the plains,
 And quell the fierceness of th'untutor'd mind :
 From lofty mountains, and from valleys low,
 From the broad lakes, and plains, that wide extend,
 From ev'ry quarter whence the winds can blow,
 Some of their tribes the various nations send.
 But most from where *Ohio's* waters roll
 To *Lehigh's* lucid stream, the chiefs repair ;
 Led by the glitt'ring centre of the pole,
 To meet in love their Christian brethren there.
 In yonder bow'r behold the council meet,

Solemn

Solemn and grand, without the help of art ;
 Of justice, commerce, peace, and love, they treat,
 Whilst eloquence unlabour'd speaks the heart.
 See from the throng a painted warrior rise,
 A savage *Cicero*, erect he stands,
 Awful, he throws around his piercing eyes,
 Whilst native dignity respect commands.
 High o'er his brow wantons a plumed crest,
 The deep vermilion on his visage glows,
 A silver moon beams placid round his breast,
 And a loose garment from his shoulders flows.
 One nervous arm he holds to naked view,
 The chequer'd wampum glitt'ring in his hand ;
 His speech doth all the attic fire renew,
 And nature dictates the sublime and grand.
 Untouch'd by art, e'en in the savage breast,
 With native lustre, how doth reason shine !
 Science ne'er taught him how to argue best,
 The schools ne'er strove his language to refine.
 What noble thoughts, what noble actions rise
 From in-born genius, unrestrain'd and free ?
 A tinctur'd medium oft deceives our eyes,
 And art should prune, but not distort the tree.
 E'en those who much their tutor'd reason boast,
 And in the sacred seats of learning dwell ;
 'Too oft obscure the paths of virtue most,
 And only study how to puzzle well.
 Why let the stream thro' levell'd parterres glide
 Its lazy course to marble bounds confin'd ;
 Give me the bubbling fountain's mossy side,
 In contemplation sweet to lull my mind.

From nature's store the warrior's speech is dress,
 More pure the council fire begins to glow :
 He bids the brighten'd chain of friendship last,
 Long as the sun shall burn or waters flow.
 Their mutual faith by firm assurance bound,
 The chiefs, well pleas'd from solemn treaty rise,
 Their brethren's bounty richly spreads the ground
 And they with grateful joy divide the prize.
 How fair is charity, celestial maid !
 And this is charity sincere indeed,
 To see our foes with tend'rest care repaid,
 To cloth the naked and the hungry feed.

Now o'er the plain the swarthy heroes bring
 A num'rous tribe, devising pastimes gay :
 With sportive shouts they make the mountains ring,
 And with athletic feats conclude the day.
 Some with loose tresses floating in the wind,
 In the swift race for victory contend ;
 A fierce ambition fires each youthful mind :
 They strain each sinew, ev'ry limb extend.
 To smite the ball, some wield the massy oak,
 And send it hissing, bounding o'er the plain ;
 Till counter-check'd by repercussive stroke,
 Swift the elastic ball returns again.
 Their nicer skill the dext'rous archers try,
 And eager strive for victory and fame ;
 From the tough bow the feather'd arrows fly,
 And pierce the centre of their distant aim.
 No keener joy the youths of *Greece* inspir'd,
 No brighter glories kindled in their eyes ;

When

When they prefs'd forward with ambition fir'd
To win and claim the fair *Olympic* prize.

Now palid vesper mourns departing day,
The frequent tears that trickle from her eye,
Fall brilliant stars, and mark her spangled way,
O'er the vast concave of the dusky sky:
And now the chiefs for awful rites prepare,
And hand in hand in horrid rounds unite,
Where curling blazes lash the misty air,
And pierce their radiance thro' the gloom of night,
—The dance of war begins, their eye-balls roll,
And dart their fierce enraged glances round;
More than infernal madness fills the soul,
And distant rocks their fearful yells resound.

No greater frenzy e'er the priestess shook,
When on the sacred tripod mounted high,
Her tender, shiv'ring, panting frame was struck
With the rough presence of the deity.
Each visage now convulsed looks aghast,
Their limbs are all in rude contortions thrown,
Their wild enthusiasm heightens fast,
And they for devils, not for men are known:
Till wadded nature can no more sustain,
And down in sleep their wearied bodies fall;
Silence profound resumes her awful reign,
And midnight's thickest mantle covers all.

A N N E L E G Y

SACRED TO THE MEMORY OF

Mrs. A N N G R Æ M E,

AND HUMBL Y INSCRIBED TO

Mrs. ANN STEDMAN AND Miss ELIZA GRÆME,

SURVIVING DAUGHTERS OF THE DECEASED :

As a testimony of his sincere affection and regard by their much
obliged Friends,

FRANCIS HOPKINSON.

*“ I heard a voice from Heaven, saying unto me, Write, from henceforth, bless-
ed are the dead which die in the Lord, Even so saith the spirit : for they rest
from their labours.”*---Rev. xiv. 13.

WHY move the marble jaws of yonder tomb?
Why gleams the day light on her sacred gloom?
Why doth she thus her dark abode prepare?
And what new guest is soon expected there?
Oh! see she comes; amidst a weeping throng,
In solemn pomp Monimia's born along:

Monimia's breast hath heav'd its latest groan,
 And dust and ashes claim her as their own—
 Away false world—away, from reason's eye ;
 All trifling objects, vain ideas fly !
 More awful scenes are present to my view,
 And in my bosom leave no room for you.
 The drooping pall ; the bell's slow fullen found ;
 The gaping grave ; the weeping friends around ;
 By sacred priests the solemn service read ;
Monimia number'd with the silent dead.
 These, these are serious subjects, and I find
 My soul to serious sentiments inclin'd,

Monimia's gone ! up to the lofty skies
 Methinks I see her fainted spirit rise ;
 Methinks I hear her voice triumphant sing,
 “ *Grave* where's thy victory ? *Death* where's thy sting ?

Say shall we mourn because her conflict's o'er ?
 Say, shall we weep, because she weeps no more ?
 Before the fullness of the Christian's joy,
 Death must this transitory frame destroy ;
 Earth must to earth, the spirit to her flight,
 For with its parent source shall each unite.

Full of desires unsatisfied thro' life,
 The anxious soul maintains continual strife :
 Fast lock'd in clay, amid surrounding foes,
 She pants and longs for freedom and repose.
 With beck'ning hand, and a deceitful smile,
 Here stands temptation ready to beguile :

With gloomy aspect, there a fearful train,
 Of poignant sorrows and distracting pain :
 And last of all, comes her tremendous foe,
 The king of terror strikes the fatal blow ;
 The heart grows sick, unequal throbs express,
 Nature's last labour, and extreme distress :
 Oh ! who can tell the agonizing throes ;
 When the lips tremble and the eye-lids close ;
 When the soul, struggling in another birth,
 Strives to get loosen'd from encumb'ring earth,
 When Horror's blackest midnight would prevail,
 And all the help the world can give must fail ;
 Whilst the cold sweat oozes thro' ev'ry pore,
 Till suffering nature can endure no more.

Oh ! What is life, and all this life can give,
 We taste, but not enjoy ; we breath, not live !
 True joy and real life are fixt above,
 The only objects worthy of our love :
 Lament not then, that lov'd *Monimia's* gone,
 Her time of trial's past, her work is done ;
 Her hope did firmly on her God depend,
 She stood Christ's faithful soldier to the end,
 And shall that crown of victory obtain,
 Which faints expect, and martyrs died to gain.

Not to this period were her views confin'd,
 A prospect nobler far engag'd her mind ;
 Array'd in immortality to stand,
 Beyond the reach of time at God's right-hand ;
 To lift her voice with ecstasy divine ;
 And join the song where shining myriads join,

Till Heav'n itself feels the prevailing found,
 And everlasting kingdoms tremble round :
 To view his glory with undazzled eye,
 Who for his carpet spread yon glitt'ring sky ;
 Who from his throne looks downward to behold,
 Worlds glide o'er worlds, systems o'er systems roll'd ;
 To stretch the wings of thought from place to place,
 Pierce the dark regions of unbounded space ;
 In full fruition ev'ry hope destroy,
 And drop belief to grasp the real joy.
 Such were the objects of her souls desire ;
 These did each virtue, ev'ry grace inspire,
 The word of truth, her still unerring guide,
 Faith, Hope, and Christian charity, supplied :
 A noble fortitude, false fear disarm'd,
 A steady piety her bosom warm'd ;
 She liv'd a bright example to mankind :
 Peaceful she died, contented and resign'd.

Oh ! may I strive her footsteps to pursue,
 And keep the Christian's glorious prize in view :
 Like her defy the stormy waves of life,
 And with heroic zeal maintain the strife :
 Like her find comfort in the arms of death,
 And in a peaceful calm resign my breath.

Grave Park July 1765.

V E R S E S

Wrote in a blank book which once belonged to Mr. *Shenstone* the poet, and was given by the *Lord Bishop of Worcester*.

COME little book, the giver's hand,
 Shall add such worth to mine,
 That I will hold thee highly priz'd,
 And joy to call the mine.

Come little book; nor in my care,
 An humbler lot refuse,
 Tho' Worcester own'd thee once, tho' once
 Design'd for *Shenstone's* muse.

Had *Shenstone* in thy spotless page
 In glowing numbers plac'd,
 All that is pleasing great, and, good,
 With ev'ry virtue grac'd:

Fill'd thee with gentleness and love,
 With piety and truth;
 The wisdom of experienc'd years,
 The brilliant powers of youth;

With all the condescending ease
 Of manners most refin'd,
 Then hadst thou been an emblem fit,
 Of *Worcester's* generous mind.

Come little book ; and let me boast
 No smal', no common fame,
 That in thy once so honour'd page,
 I write my humble name.

Hartlebury Castle, in Worcester-shire, 1767.

TO A VERY YOUNG LADY.

SO young, so skilful, and so fair !
 Such praise thy merits claim,
 The muse with rapture should prepare,
 To celebrate thy fame.

If thus thy morn of youth displays
 So much of virtue's light ;
 Oh ! who can tell the glorious blaze
 Of life's meridian height ?

Gay hope with joy to future years,
 Extends her eager view ;
 A pleasing prospect there appears,
 She smiles, and points to you.

Thro' life she sees thee take thy way,
 Elate in beauty's pride.
 The graces all around thee play,
 And virtue is thy guide.

Fair innocence with peace and love,
Strew flow'rs where e'er you tread ;
And mild religion from above,
Sheds blessings on thy head :

Then shall thy worth some bard inspire,
In more exalted lays,
To bid the gazing world admire,
And give thee all thy praise.

London, 1767.

A N O D E

Set to Music on Mrs. B——'s Birth Day.

RECITATIVE.

WHEN *Cæsar's* birth-day glads Britannia's isle,
 The earth exults and nature seems to smile :
 Th' uplifted trumpet's awful sound,
 United acclamations round,
 And thund'ring cannon's awful roar,
 Shake with rude transport *Albion's* shore.

AIR.

But in more soft and pleasing lays
 Let us our joy display ;
 Oh ! swell the tend'rest note of praise
 To hail *Eliza's* day.

For with fair truth and love divine,
 Her peaceful soul is blest ;
 And all the winning virtues shine
 Serenely in her breast.

Like some pure placid stream that flows
 Gently and free from stain,
 Dispensing blessings as it goes,
 Along the flowry'ry plain :

So she thro' life her equal way
 Glides on with spotless name :
 Oh ! may this oft returning day
 Encrease her modest fame !

Hartlebury Castle, 1766.

* THE HUMBLE PETITION

Of the *Docks, thistles, and nettles* of Hartlebury Farm, to the Lord
Bishop of Worcester.

ILLUSTRIOUS Worcester; let thy patient ear,
Receive our sorrows, and with pity hear;
Oh! haste, and shield with thy protecting hand
The *thistles, docks, and nettles* of this land.

There was a time when our increasing race,
Had long in calm possession held this place:
See yon fair park, those blooming gardens see,
Beside each stream, and underneath each tree,
We rear'd our lofty crest, and all around,
With unmolested foilage spread the ground;
Those days of peace, alas! are now no more:
Who shall to us those days of peace restore?
Our num'rous race destroy'd, our empire lost;
Nor garden, park, nor stream, nor shade we boast;

Up

* These lines were occasioned by Mrs. I---'s, my Lord's sister, rooting out the thistles, &c. from the gardens, walks, and park with uncommon industry and care.

Up rose our foe, with unrelenting hand,
 And fatal steel, to root us from the land ;
 Amongst our tribes destruction marks her way,
 To us no mortal, but to her 'tis play ;
 None, none escape ! young, old, and short and tall,
 Before her powerful arm unpitied fall ;
Doaks, thistles, nettles round her mangled lie,
 And in one common heap of ruin die.

In vain, we thistles, our high lineage bring,
 From ancient thrones ; the pride of Scotland's king ;
 And what avails ! that born thro' war's alarms,
 Our sacred flow'r grac'd Caledonia's arms ;
 Wav'd in her banner, glitter'd on her shield,
 And spur'd her heroe to the martial field ;
 In vain we claim a kingdom for our own,
 Or boast that now we deck the British throne.

Soon as from earth we spring erect and gay,
 And spread our purple tassels to the day ;
 With fatal steel her hands our stalks divide,
 And to the dust bring down our with'ring pride.
 And yet, oh ! strange to tell ! the courteous fair,
 To all around, extends her nursing care ;
 With placid smiles and with benignant mind,
 To other's gentle, but to us unkind :
 Oh ! say what dire offence hath caus'd our woe,
 And made that breast, where pity dwells, a foe ?
 Or rather say, what can our state restore,
 And foorth her rage that she destroy no more.

Nor her alone we fear *, a hostile hand,
 O'er the seas wafted from a distant land,
 Pours dire destruction on our harmless race,
 And fills with heaps of slaughter ev'ry place.

When western breezes with a murmur found
 Shook the small leaf and wav'd the groves around,
 We little thought the soft and pleasing gale,
 Fill'd for our mortal foe the swelling sail :
 Unwelcome guest ! thy coming we deplore,
 And wish thee back upon thy native shore.
 Are there no *thistles* there thy hands t'employ ?
 Are there no *docks* or nettles to destroy ?
 But must we fall, and whilst we sue in vain,
 Be lopt and left to languish on the plain ?

In vain hath nature with indulgent care,
 On wings of down high pois'd our feed in air,
 And bid the winds the little treasures bear ;
 For in their cells, e'er they're learnt to fly,
 Cut off, unshedg'd the feeds prolific die.
 In this distress on thee, our Lord we call ;
 Save us from ruin, e'er we perish all !
 Oh ! *great* and *good* to mercy still inclin'd,
 Let this our pray'r with thee acceptance find.

Small our request—not where thy harvests glow,
 Do we desire, or would presume to grow ;

In

* The author.

In humble state beneath each hedge to stand,
Is all we ask from thy benignant hand.
So shall our tribes exult in harmless joy,
Nor e'er with pointed sting thy hands annoy ;
But thro' these fields we'll celebrate thy fame,
And thistles yet unfown shall bless great Worcester's name.

Hartlebury Castle, 1766.

TO MYRTILLA.

WITH sprightly air, and graceful mien,
 Easy and ever gay ;
Myrtilla trips along the green,
 And steals all hearts away.

Good-humour smiling in her face,
 Seems sorrow to defy ;
 Wit lights up ev'ry sprightly grace,
 And sparkles in in her eye.

Fair is her form, her spotless mind
 With ev'ry virtue blest ;
 And no offence could ever find
 A harbour in her breast.

Ye swains, with caution pass this way ;
 For should you meet the fair,
 You must to beauty fall a prey ;
 Love would your hearts ensnare.

Hartlebury Castle, 1766.

T O M Y R T I L L A.

SOON *Myrtilla* muſt thy friend,
 Haſten to a diſtant ſhore ;
 May propitious gales attend,
 May they waft him ſafely o'er !

When to penſive joys inclin'd,
 Thro' my native groves I ſtray,
 Thy dear image to my mind
 Soothing pleaſures ſhall convey.

Fancy, oft, in airy flight,
 Will direct her courſe to you ;
 Bringing ſcenes of paſt delight
 Back to my enraptur'd view.

Oft ſhall *Schuylkill's* rocky ſhore,
 With her waving woods around,
 Thy fond name, repeating o'er,
 Strive to ſwell the pleaſing ſound.

Thus with friendſhip moſt ſincere,
 Shall my faithful boſom glow ;

All thy virtues I'll revere,
With such love as angels know.

Hoping still tho' far from thee,
I've a place in thy regard ;
Which delightful thought shall be
My firm constancy's reward.

AN EVENING AT SEA.

MORE pleasing far, than all the glare of day,
 The evening mild invites the muse's lay.
 Our gallant ship, with ev'ry turgid sail,
 Glides smoothly on before the pressing gale :
 Whilst the full moon, fair regent of the night,
 Pours o'er the sea a flood of silver light :
 No noise is heard except the pleasing sound,
 Of waves that roll and swell and break around ;
 Ever responsive to the watchman's song,
 Who treads the deck, and trills his ditties long
 With voice melodious, and with heart so true,
 To lovely *Nancy*, or to black ey'd *Sue*.

Far on a distant shore, with curious eye,
 Our anxious friends consult th' uncertain sky ;
 Longing they look, and with impatience burn,
 To see in safety our tall bark return.

On that blest period we with no less joy,
 Our eager hopes our constant thoughts employ.
 Haste happy day! when with sincere delight
 Our hands shall join; and social hearts unite.

Pennsylvania Packet, }
 1766. }

V E R S E S

Wrote near the Conclusion of a very tedious Voyage.

HAIL to the near approach at last,
 Of that long look'd for day !
 When hope enjoy'd, and dangers past,
 Shall former cares repay.

The happy hour is now at hand,
 When we shall with no more,
 But with exulting pleasure stand
 Firm on our native shore.

Let ocean swell his angry wave ;
 Let winter blasts arise ;
 Their fury we no more will brave,
 Nor trust uncertain skies.

But in secure and calm delight
 Our peaceful hours employ ;
 And crown revolving day and night,
 With ev'ry social joy.

Thus the *good man* with tranquil mind
 At close of life's career,

Goes chearful on, in hopes to find
A happy harbour near.

Nor would he tempt those storms again,
Which shook his virtuous breast ;
But, well rememb'ring former pain,
Contented to sink to rest.

T O D E L I A,

WROTE ON A LEAF IN HER POCKET-BOOK.

GO little leaf, and to the fair,
 The mistress of my heart;
 My truth and constancy declare,
 My ardent love impart.

But how shall thy small page contain
 That which no bounds controul?
 Or how shall feeble words explain
 The transports of the soul?

Go, tell her then that nothing less
 Than a whole life of love,
 Can all my joy in her express,
 Can my fix'd passion prove.

That nought but death can from my mind,
 Her dear idea part,
 And lovely *Delia* ne'er shall find
 A rival in my heart.

Go, tell her all our peaceful years
In mutual blifs we'll spend;
And hope to meet beyond the spheres,
When this frail life shall end.

May, 1768.

SONG.

S O N G.

SOFT ideas love inspiring,
 Ev'ry placid joy unite ;
 Ev'ry anxious thought retiring,
 Fill my bosom with delight.

Soft ideas, gently flowing,
 On your tide, so calm and still ;
 Bear me, where sweet zephyrs blowing,
 Wave the pines on *Borden's-Hill* *.

Where the breezes odours bringing,
 Fill the grove with murm'ring sound ;
 Where shrill notes of birds sweet singing,
 Echo to the hills around.

To the pleasing gloom convey me,
 Let my *Delia* too be there ;
 On her gentle bosom lay me,
 On her bosom soft and fair.

Whilst

* At Bordentown on Delaware.

Whilst I there, with rapture burning,
 All my joy in her express
 Let her love for love returning,
 Me with fond careffes blefs.

On his little wings descending,
 Bring the god of foft delight :
 Hymen too with torch attending,
 Muft our hands and hearts unite.

She the fource of all my pleafure
 Shall my breast with tranfport fill :
Delia is my foul's best treasure,
Delia, pride of *Borden's-Hill*.

July, 1768.

T O M Y R T I L L A.

T H E N E S T.

AS in the glowing noon of day,
 Stretch'd carelefs on the ground,
 Beneath the breezy pines I lay,
 Lull'd by their murm'ring found:

A little nest aloft I spy'd,
 Of feathers white as fnow,
 With ftrong, tho' flender, cordage ty'd
 Fast to the top-moft bough.

With eager hafte I feiz'd the prize,
 And found a beauteous pair:
Love yet unfledg'd with *friendfhip* lies,
 Together neftling there.

Delia my captive love detains
 In Hymen's filken clue;
 Friendship, *Myrtilla*, yet remains
 An off'ring fit for you.

THE

THE WASP.

WRAPT in Aurelian filth and slime,
 An infant wasp neglected lay ;
 Till having doz'd the destin'd time,
 He woke, and struggl'd into day.

Proud of his venom bag and sting,
 And big with self-approved worth :
 Mankind, he said, and stretch'd his wing,
 Should tremble when I sally forth.

In copious streams my spleen shall flow,
 And satire all her purses drain ;
 A critic born, the world shall know
 I carry not a sting in vain.

This said, from native cell of clay,
 Elate he rose in airy flight ;
 Thence to the city chang'd his way,
 And on a steeple chanc'd to light.

Ye gods, he cry'd, what horrid pile
 Prefumes to rear its head so high—

This clumsy cornice—see how vile :
 Can this delight a critic's eye ?

With pois'nous sting he strove to wound
 The substance firm : but strove in vain ;
 Surpris'd he sees it stands its ground,
 Nor starts thro' fear, nor writhes with pain.

Away th' enraged insect flew ;
 But soon with aggravated pow'r,
 Against the walls his body threw,
 And hop'd to shake the lofty tow'r.

Firm fix'd it stands ; as stand it must,
 Nor heeds the wasp's unpitied fall :
 The humbled *critic* rolls in dust,
 So stunn'd, so bruis'd, he scarce can crawl.

TO T—— M——, Esq.

AS I sat by the fire, the newspaper read,
 And waited for breakfast, my wife being in bed;
 It came in my mind that I could not do better
 Than to call for some paper, and write you a letter.
 'Tis true I have nothing material to say,
 But will mention what incidents fell in my way;
 Our leaving *Newcastle*, and how we got hither,
 Half tir'd to death, thro' wind and foul weather.
 I mounted at nine, and fet off on my journey,
 Along with my brother-in-law the attorney;
 Who took with him papers, so many and bulky,
 He found it convenient to ride in his sulky.
 We travell'd, and chatted, and made ourselves merry,
 And who should we meet a few miles from the ferry.
 But the *great little man*: the justice I mean,
 Rever'd and belov'd by the swains of *Christeen*.
 You know that at present, however, he labours
 Beneath a sad quarrel with one of his neighbours;
 And then to *Newcastle* was going to show
 What homage the vulgar to justices owe.
 He stopp'd us, and while we stood still in our places,
 Related his story, and cited some cases,
 To prove how exceeding important the trust is,
 And what veneration is due to a justice,

My brother assented, or seem'd to assent,
 To all that was urg'd—away then he went,
 Whilst we on our journey pursued as before,
 Till we came to the ferryman's house on the shore.
 Now this ferryman happen'd to be the vile brute
 Who affronted his worship, and rais'd this dispute :
 He likewise related his case to the lawyer
 In such agitation, he work'd like a sawyer ;
 Whilst I stood impatient, unable to stir,
 For his story was tedious, and caus'd a demur :
 At length I exclaim'd—as I am a sinner,
 We've no time to lose, we shall miss of our dinner :
 But the man fully bent to wipe off his attainder,
 Stept into the boat, and there told the remainder ;
 The lawyer assented, or seem'd to assent,
 To all that was said—then forward we went.
 Nothing afterwards happened that's worthy relating,
 Till arrived at *Chester*, the place of our bating ;
 And here we divided, as was our intent ;
 At *Cowpland's* he stopt, and to *Withy's* I went :
 Here the rooms were all full—nought but bustle and rout,
 And over-grown booby-heads stalking about ;
 For this was the time when the lawyers resort,
 From all quarters round to attend *Chester* court :
 Attornies and clients here lovingly meet,
 The one to be cheated, the other to cheat.

Now dapper lawyers croud each street,
 Drest fine to cut a dash ;
 Saluting ev'ry one they meet,
 In hopes of getting cash.

How dost thou friend, 'twould give me joy
 To serve you with my skill;
 For if you please, I can destroy,
 Or can confirm a will.

Say, has your neighbour's deed a flaw?
 Your title got a wound?
 The breach I'll widen by the law,
 By law will make your's found.

“ A widow, sir, there is oppressed,
 “ And by a wealthy knave;
 “ Oh! then assist the poor distressed,
 “ Her all from ruin save;

“ Her thanks and pray'rs she'll freely give,
 “ 'Tis all you can obtain;
 “ For she hath scarce enough to live,
 “ And children to maintain.”

“ Her case is bad—I can't defend her—
 “ Go tell her so from me;
 “ Besides, my conscience is too tender
 “ To plead without a fee.

“ Sir, sir,” cries another, “ you're gen'rous indeed,
 “ For the present, I think myself very well fed:
 “ By what you have said, I can plainly discover;
 “ If you bring an ejection you'll surely recover;
 “ The law is as plain as the nose on your face;
 “ I remember lord *Raymond* has just such a case,

" And what tho' the tenant hath long held the land,
 " I warrant we'll soon wrest it out of his hand ;
 " And therefore I think you may safely depend on't,
 " In a very few years we shall oust the defendant."

Quite tir'd of nonsense, and noisy discourse,
 I swallow'd my dinner, and mounted my horse :
 But scarce had proceeded a mile on my way,
 Before it turn'd out a very foul day ;
 The wind and the rain met me full in the face,
 Yet I travell'd along at a pretty round pace ;
 Tho' I button'd up close, and flapp'd down my hat,
 I was wet to the skin, like an half-drowned rat.
 At length I got home, well pleas'd you may guess,
 And by a great fire soon changed my dress.

And now I suppose you may think by this time,
 I have teiz'd you enough with my nonsense in rhyme :
 Before I conclude—my compliments pay
 To fat Mrs R——d, and to fair Mrs. C——y ;
 Remember me too to your neighbour V——e,
 Tho' grey as a badger, and old as a weazel ;
 To Mr. V——h, who leather can tan,
 And justice M'W——m, that good-natur'd man ;
 To Johnny the barber, who hobbles about,
 And takes the best man in the town by the snout.
 Thus you see in good time, without any confusion,
 My letter is brought to a happy conclusion.

TO THE MEMORY OF
MRS. MARY M'KEAN.

To yonder new made grave I'll go,
And there indulge my swelling grief:
There shall the tears of friendship flow,
And give my wounded heart relief.

To yonder grave, oh! muse, repair,
And whilst I breathe my tender sighs,
Attune thy plaintive lyre, for there
The lov'd, the lost *Maria* lies.

Blest be the ground where thou art laid;
Let no unhallow'd foot presume
Upon thy tufted grave to tread;
No hostile hand profane thy tomb.

Angelic hosts assembled here,
Shall guard the consecrated ground;
In robes of radiant light appear,
And spread seraphic music round.

The winds that thro' the midnight gloom,
Wild howling o'er the mountains fly;
Shall cease their rage, when near thy tomb,
And pass in plaintive murmurs by.

When at the board with festive glee,
 Gay pleasures social bosoms cheer ;
 E'en mirth shall pause to think on thee,
 And, thinking, drop a silent tear.

With grateful hearts the poor distressed,
 Shall to thy grave lamenting go ;
 Then shall thy hand be duly blest,
 That hand which lov'd to soften woe.

Oft when the moon with placid ray
 Gleams o'er the dew-bespangled green,
 Here shall my silent footsteps stray,
 Here shall my pensive form be seen.

Thy worth, dear faint, shall then arise
 All bright to contemplation's view :
 Review thy life with weeping eyes,
 And weeping strive to copy you.

Remembrance long shall hold thee fast ;
 Thy form, thy virtues ne'er shall die :
 I'll love thee thus whilst life shall last,
 And bless thee with my latest sigh.

T H E E P I T A P H .

FAIR was her form, serene her mind,
 Her heart and hopes were fix'd on high :
 Her hand beneficent and kind
 Oft wip'd the tear from sorrow's eye.

The sweets of friendship soften'd care ;
 Love, peace, and joy, her soul possess :
 Meekness perfum'd each rising pray'r,
 And ev'ry rising pray'r was blest.
 In heav'n we trust, her fainted spirit sings
 Glad *Hallelujahs* to the *King of Kings*.

March, 1773.

POLITICAL BALLADS,

WRITTEN IN THE YEAR 1777.

Date Obolum Bellefario.

AS I travell'd o'er the plain,
About the clofe of day,
I chanc'd to wander in a lane,
A lane of mire and clay.

'Twas there a dirty drab I faw,
All feated on the ground,
With oaken ftaff and hat of ftraw,
And tatters hanging round.

At my approach ſhe heav'd a figh,
And due obeifance paid,
Firft wip'd a tear from either eye,
Then her petition made.

“ A wretch forlorn, kind fir, you fee,
“ That begs from door to door ;
“ Oh ! ftop and give for charity,
“ A penny to the poor !

Tho'

“ Tho’ now in tatters I appear,
 “ Yet know the time hath been,
 “ When I partook the world’s good cheer,
 “ And better days have seen.

Proceed, said I, whilst I attend
 The story of thy woe ;
 Proceed, and charity shall lend
 Some help before I go.

“ If blooming honours men delight,
 “ If charms in wealth they see,
 “ My fame once soar’d a glorious height,
 “ And who more rich than me.

“ Of sons and daughters I can boast
 “ A long illustrious line;
 “ Of servants could command a host,
 “ For large domains were mine.

“ But George my youngest faithless boy,
 “ Hath all my powers o’erthrown ;
 “ And in the very beds of joy
 “ The seeds of sorrow sown.

“ He thirsting for supreme command,
 “ Contemn’d my wife decrees,
 “ And with a sacrilegious hand,
 “ My dearest rights did seize.

“ A magic wand I once possess’d,
 “ A cap aloft it bore ;

“ Of

- “ Of all my treasures this the best,
And none I valued more.
- “ Ruthless he broke the sacred rod,
“ The cap he tumbled down;
“ Destroying thus, what with their blood
“ His ancestors had won.
- “ An orphan child fell to my care,
“ Fair as the morn was she,
“ To large possessions she was heir,
“ And friendly still to me.
- “ But George, my son, beheld the maid,
“ With fierce lascivious eye ;
“ To ravish her a plan he laid,
“ And she was forc'd to fly.
- “ She's young and will no more depend
“ On cruel George or me ;
“ No longer now my boasted friend,
“ Nor of my family.
- “ Bad measures often end in worse,
“ His fell intent to gain ;
“ He sent in rage a mighty force,
“ To bring her back again.
- “ But to defend the injur'd maid,
“ Her faithful household came ;

“ In battle strong they stood array’d,
 “ And gain’d immortal fame.

“ ’Mongst these a god-like hero rose
 “ Wife, generous and brave,
 “ He check’d the frenzy of her foes,
 “ His arm was strong to save.

‘ So near perfection, that he stood
 “ Upon the bound’ry line,
 “ Of infinite from finite good,
 “ Of human from divine.

“ Defeated thus in all his schemes,
 “ My foolish, wick’d son,
 “ Awak’d from his delusive dreams,
 “ And found himself undone.

“ Mean time I suffer’d, in disgrace,
 No comfort could I find,
 “ I saw distress come on a pace,
 “ With ruin close behind.

“ At length distracted quite with grief,
 “ I left my native home,
 “ Depending now on chance relief,
 “ Abroad for bread I roam.

“ A shield and lance once grac’d these hands,
 “ Perhaps you’ve heard my fame,

“ For I was known in distant in lands,

“ *Britannia* is my name.

“ *Britannia* now in rags you see ;

“ I beg from door to door—

“ Oh! give, kind fire for charity,

“ A penny to the poor.

THE BATTLE OF THE KEGS.

GALLANTS attend and hear a friend,
 Trill forth harmonious ditty,
 Strange things I'll tell which late befel
 In Philadelphia city.

'Twas early day, as poets say,
 Just when the sun was rising,
 A foldier stood on a log of wood,
 And saw a thing surprising.

As in amaze he stood to gaze,
 The truth can't be denied, fir,
 He spied a score of kegs or more
 Come floating down the tide, fir.

A failor too in jerkin blue,
 This strange appearance viewing,
 First damn'd his eyes, in great surprife,
 Then said some mischief's brewing.

The

These kegs, I'm told, the rebels bold,
 Pack'd up like pickling herring;
 And they're come down t' attack the town,
 In this new way of ferrying.

The foldier flew, the failor too,
 And scar'd almost to death, fir,
 Wore out their shoes, to spread the news,
 And ran till out of breath, fir.

Now up and down throughout the town,
 Most frantic scenes were acted;
 And some ran here, and others there,
 Like men almost distracted.

Some fire cry'd, which some denied,
 But said the earth had quaked;
 And girls and boys, with hideous noise,
 Ran thro' the streets half naked.

Sir William he, snug as a flea,
 Lay all this time a snoring,
 Nor dream'd of harm as he lay warm,
 In bed with Mrs. L^{oving}.

Now in a fright, he starts upright,
 Awak'd by such a clatter;
 He rubs both eyes, and boldly cries,
 For God's sake, what's the matter?

At his bed-side he then espy'd,
 Sir Erskine at command, fir,
 Upon one foot, he had one boot,
 And th' other in his hand, fir.

“ Arise, arise, fir Erskine cries,
 “ The rebels—more's the pity,
 “ Without a boat are all afloat,
 “ And rang'd before the city.

“ The motly crew, in vessels new,
 “ With Satan for their guide, fir.
 “ Pack'd up in bags, or wooden kegs,
 “ Come driving down the tide, fir.

“ Therefore prepare for bloody war,
 “ These kegs must all be routed,
 “ Or surely we despised shall be,
 “ And British courage doubted.”

The royal band, now ready stand
 All rang'd in dread array, fir,
 With stomach stout to see it out,
 And make a bloody day, fir.

The cannons roar from shore to shore,
 The small arms make a rattle ;
 Since wars began I'm sure no man
 E'er saw so strange a battle.

The rebel dales, the rebel vales,
 With rebel trees furrounded;
 The distant wood, the hills and floods,
 With rebel echos founded.

The fish below fwam to and fro,
 Attack'd from ev'ry quarter;
 Why fure, thought they, the devil's to pay,
 'Mongst folks above the water.

The kegs, 'tis said, tho' strongly made,
 Of rebel staves and hoops, fir,
 Could not oppose their powerful foes,
 The conqu'ring British troops, fir.

From morn to night these men of might
 Display'd amazing courage;
 And when the fun was fairly down,
 Retir'd to sup their porrage.

An hundred men with each a pen,
 Or more upon my word, fir.
 It is most true would be too few,
 Their valour to record, fir.

Such feats did they perform that day,
 Against these wick'd kegs, fir,

That

That years to come, if they get home,
They'll make their boasts and brags, fir.

N. B. This ballad was occasioned by a real incident. Certain machines, in the form of kegs, charg'd with gun powder, were sent down the river to annoy the British shipping then at Philadelphia. The danger of these machines being discovered, the British manned the wharfs and shipping, and discharged their small arms and cannons at every thing they saw floating in the river during the ebb tide.

A C A M P B A L L A D.

MAKE room, oh! ye kingdoms in hist'ry renowned
 Whose arms have in battle with glory been crown'd,
 Make room for America, another great nation,
 Arises to claim in your council a station.

Her sons fought for freedom, and by their own brav'ry
 Have rescued themselves from the shackles of slav'ry.
 America's free, and tho' Britain abhor'd it,
 Yet fame a new volume prepares to record it.

Fair freedom in Briton her throne had erected,
 But her sons growing venal, and she disrespected;
 The goddesses offended forsook the base nation,
 And fix'd on our mountains a more honour'd station.

With glory immortal she here sits enthron'd,
 Nor fears the vain vengeance of Britain disown'd,
 Whilst Washington guards her with heroes surrounded,
 Her foes shall with shameful defeat be confounded.

To arms then, to arms, 'tis fair freedom invites us ;
The trumpet shrill founding to battle excites us ;
The banners of virtue unfurl'd, shall wave o'er us,
Our hero lead on, and the foe fly before us.

On Heav'n and Washington placing reliance,
We'll meet the bold Britton, and bid him defiance :
Our cause we'll support, for 'tis just and 'tis glorious
When men fight for freedom they must be victorious.

THE TOAST.

'TIS Washington's health—fill a bumper around,
 For he is our glory and pride ;
 Our arms shall in battle with conquest be crown'd,
 Whilst virtue and he's on our side.

'Tis Washington's health—and cannons should roar,
 And trumpets the truth should proclaim ;
 There cannot be found, search the world all o'er,
 His equal in virtue and fame.

'Tis Washington's health—our hero to bless,
 May heav'n look graciously down :
 Oh ! long may he live our hearts to possess,
 And freedom still call him her own.

The BIRDS, the BEASTS, and the BAT.

A FABLE.

A WAR broke out in former days,
 If all is true that Æsop says,
 Between the birds that haunt the grove,
 And beasts that wild in forests rove :
 Of fowl that swim in water clear,
 Of birds that mount aloft in air ;
 From ev'ry tribe vast numbers came,
 To fight for freedom, as for fame :
 The beasts from dens and caverns deep,
 From valleys low and mountains steep ;
 In motly ranks determin'd stood,
 And dreadful howlings shook the wood.
 The bat, half bird, half beast was there,
 Nor would for *this* or *that* declare ;
 Waiting till conquest should decide,
 Which was the strongest, safest side :
 Depending on this doubtful form,
 To screen him from th' impending storm.

M

With

With sharpen'd beaks and talons long,
 With horny spurs and pinions strong,
 The birds in fierce assault, 'tis said,
 Amongst the foe such havoc made,
 That panic struck, the beasts retreat
 Rmaz'd, and vict'ry seem'd complete.
 Th' observant bat, with squeaking tone,
 Cries, *Bravo*, birds the day's our own ;
 " For now I'm proud to claim a place
 " Amongst your bold aspiring race ;
 " With leathern wings I skim the air,
 " And am a bird tho' clad in hair."

But now the beasts ashamed of flight,
 With rallied force renew the fight,
 With threatening teeth, uplifted paws,
 Projecting horns and spreading claws,
 Enrag'd advance—push on the fray,
 And claim the honours at the day.

The bat still hov'ring to and fro,
 Observ'd how things were like to go,
 Concludes those best who best can fight,
 And thinks the strongest party right ;
 " Push on, quoth he, our's is the day
 " We'll chase these rebel birds away,
 " And reign supreme—for who but we
 " Of earth and air the Lords should be ;
 " That I'm a beast I can make out,
 " by reasons strong beyond a doubt,

“ With

“ With teeth and fur ’twould be absurd,
 “ To call a thing like me a bird ;
 “ Each son and daughter of my house,
 “ Is stil’d at least a flying mouse.”

Always uncertain is the fate,
 Of war and enterprizes great :
 The beasts exulting push’d too far
 Their late advantage in the war ;
 Sure of success, insult the foe,
 Despise their strength and careless grow ;
 The birds not vanquish’d, but dismay’d,
 Collect their force, new pow’rs display’d ;
 Their chief, the eagle, leads them on,
 And with fierce rage the war’s begun.
 Now in their turn the beasts must yield,
 The bloody laurels of the field ;
 Routed they fly, disperse, divide,
 And in their native caverns hide.

Once more the bat with courtly voice,
 Hail, noble birds ! “ much I rejoice
 In your success, and come to claim
 My share of conquest and of fame.”
 The birds the faithless wretch despise ;
 Hence, traitor, hence the eagle cries ;
 No more, as you just vengeance fear,
 Amongst our honour’d ranks appear.
 The bat, disown’d in some old shed,
 Now seeks to hide his exile’d head ;

Nor dares his leathern wings display,
From rising morn to setting day :
But when the gloomy shades of night,
Screens his vile form from every sight,
Despis'd, unnotic'd, flits about ;
Then to his dreary cell returns,
And his just fate in silence mourns.

THE MOST GRACIOUS ADDRESS
OF ADMIRAL COLLIER AND GENERAL TRYON TO THE
PEOPLE OF CONNECTICUT.—JULY, 1779.

WHAT can ye hope, rebellious crew,
But vengeance dire to traitors due;
Whilst you support this insurrection,
Refusing to our king subjection?
Why so ungen'rous, so unkind?
Why to your own true int'rest blind?
'Tis fact—and take it on our word,
If you'll submit to George the Third,
You'll surely find it better far
Than carrying on this bloody war:
You'll only be of slaves a nation,
From generation to generation:
And what is that, compar'd with all
The mischiefs which may now befall,
If you unwisely still persist in
This naughty practice of resisting.

Your towns, yourselves, you can't deny,
Within the grasp of power lie:
And that we can with greatest ease,
Clap paw upon you when we please.

That

'That you've a house to put your head in,
 Have pots or kettles, beds or bedding,
 Is to our great forbearance owing,
 And tender mercy ever flowing.
 What you, presumptuous, call your own,
 You only have from us on loan ;
 And if we ask it back again,
 You know resistance would be vain.
 Therefore your houses, goods, and land,
 As monuments of mercy stand :
 But we're in hopes you now begin
 'To see, and soon will own your sin :
 'The very continent we're told*
 Begins to blush, tho' late so bold ;
 Conscious of many heinous crimes,
 And therefore would repent by times.
 And you, who thus at mercy lie,
 Should first to our protection fly :
 And save yourselves from fell perdition,
 The sure reward of black sedition.
 Would you submit, 'twould be a sample
 For others—and the good example
 Might draw in many worthy folks
 To poke their necks into our yokes ;
 And so become—oh ! blessed thing,
 'The slaves of our most gracious king.

And now we think it not amiss
 To leave you to reflect on this :

* Vide the original address, of which this is in substance a just translation throughout.

And do most graciously declare,
 That we will all those culprits spare,
 Who stay at home in peace and quiet,
 Disclaiming this unnat'ral riot ;
 We'll spare their dwellings—and what more is,
 Be kind as Howe to Jersey Tories :
 Yet rebels of the military,
 Must still remain in sad quandary ;
 And those who fill departments civil,
 Will sure go headlong to the devil ;
 Unless they will their follies own,
 And pardon ask on marrow-bone.

But do not think, because we're kind,
 We may be always of one mind ;
 And that our goodness has no end,
 Because as yet we've been your friend :
 Should you perversely still proceed,
 We shall be very wroth indeed ;
 And when we're angry—you know what—
 Connecticut must go to pot.
 Too late you'll find yourselves mistaken,
 And not a man will save his bacon :
 Therefore beware—you may rely on
 The words of *Collier* and of *Tryon*.

IN MEMORY OF
MR. JAMES BREMNER.

SING to his shade a solemn strain,
Let music's notes complain ;
Let echo tell from shore to shore,
The swain of Schuykill is no more.*

AIR.

From Scotia's land he came,
And brought the pleasing art
To raise the sacred flame
That warms a feeling heart.

The magic pow'rs of sound,
Obey at his command,
And spread sweet influence round,
Wak'd by his skilful hand.

Oh! sanctify the ground,
The ground where he is laid ;
Plant roses all around,
Nor let those roses fade.

Let none his tomb pass by,
Without a gen'rous tear,
Or sigh—and let that sigh,
Be like himself sincere.

* He died on the banks of the Schuykill, Sept. 1780.

S O N G I.

I.

COME, fair Rosina, come away,
 Long since stern Winter's storms have ceas'd;
 See! Nature, in her best array,
 Invites us to her rural feast:
 The season shall her treasure spread,
 Her mellow fruits and harvests brown,
 Her flowers their richest odours shed,
 And ev'ry breeze pour fragrance down.

II.

At noon we'll seek the wild wood's shade,
 And o'er the pathless verdure rove;
 Or, near a mossy fountain laid,
 Attend the music of the grove;
 At eve, the sloping mead invites
 'Midst lowing herds and flocks to stray;
 Each hour shall furnish new delights,
 And love and joy shall crown the day.

S O N G II.

I.

MY love is gone to sea,
 Whilst I his absence mourn,
 No joy shall smile on me
 Until my love return.
 He ask'd me for his bride,
 And many vows he swore ;
 I blush'd—and soon comply'd,
 My heart was his before.

II.

One little month was past,
 And who so blest as we ?
 The summons came at last,
 And Jemmy must to sea.
 I saw his ship so gay
 Swift fly the wave-worn shore ;
 I wip'd my tears away—
 And saw his ship no more.

III.

When clouds shut in the sky
 And storms around me howl ;

When

When livid lightnings fly,
 And threat'ning thunders roll ;
 All hopes of rest are lost,
 No slumbers visit me ;
 My anxious thoughts are tost
 With Jemmy on the sea.

S O N G III.

I.

BENEATH a weeping willow's shade
 She sat and sang alone ;
 Her hand upon her heart she laid
 And plaintive was her moan.
 The mock bird sat upon a bough
 And list'ned to her lay,
 Then to the distant hills he bore
 The dulcet notes away.

II.

Fond echo to her strains reply'd,
 The winds her sorrows bore ;
 Adieu ! dear youth—adieu ! she cry'd,
 I ne'er shall see thee more.
 The mock-bird sat upon a bough
 And list'ned to her lay,
 Then to the distant hills he bore
 The dulcet notes away.

S O N G IV.

I.

ENRAPTUR'D I gaze when my Delia is by,
 And drink the sweet poison of love from her eye;
 I feel the soft passion pervade ev'ry part
 And pleasure unusual plays round my fond heart.

II.

I hear her sweet voice, and am charm'd with her song—
 I think I could hear her sweet voice all day long;
 My senses enchanted, are lost in delight
 When love and soft music their raptures unite.

III.

Beyond all expression my Delia I love,
 My heart is so fix'd that it never can rove;
 When I see her I think tis an angel I see,
 And the charms of her mind are a heaven to me.

S O N G V.

S O N G V.

I.

SEE down Maria's blushing cheek
 The tears of soft compassion flow ;
 Those tears a yielding heart bespeak—
 A heart that feels for others' woe.
 May not those drops, that frequent fall,
 To my fond hope propitious prove,
 The heart that melts at Pity's call
 Will own the softer voice of love.

II.

Earth ne'er produced a gem so rare
 Nor wealthy ocean's ample space
 So rich a pearl—as that bright tear
 That lingers on Maria's face.
 So hangs upon the morning rose
 The chrystal drop of heav'n refin'd,
 A while with trembling lustre glows—
 Is gone—and leaves no stain behind.

S O N G VI.

O'ER the hills far away, at the birth of the morn
 I hear the full tone of the sweet sounding horn ;
 The sportsmen with shoutings all hail the new day
 And swift run the hounds o'er the hills far away.
 Across the deep valley their course they pursue
 And rush thro' the thickets yet silver'd with dew ;
 Nor hedges nor ditches their speed can delay—
 Still sounds the sweet horn o'er hills far away.

S O N G VII.

I.

MY gen'rous heart disdains
 The slave of love to be,
 I scorn his servile chains,
 And boast my liberty.
 This whining
 And pining
 And wasting with care,
 Are not to my taste, be she ever so fair.

II.

Shall a girl's capricious frown
Sink my noble spirits down?
Shall a face of white and red
Make me droop my silly head?
Shall I fet me down and sigh
For an eye-brow or an eye?
For a braided lock of hair,
Curse my fortune and despair?

My gen'rous heart disdains, &c.

III.

Still uncertain is to-morrow,
Not quite certain is to-day—
Shall I waste my time in sorrow?
Shall I languish life away?
All because a cruel maid,
Hath not Love with Love repaid.

My gen'rous heart disdains, &c.

S O N G VIII.

I.

THE traveller benighted and lost,
O'er the mountains pursues his lone way;
The stream is all candy'd with frost
And the icicle hangs on the spray,
He wanders in hope some kind shelter to find
'whilst thro' the sharp hawthorn keen blows the cold wind.'

II.

II.

The tempest howls dreary around
 And rends the tall oak in its flight ;
 Fast falls the cold snow on the ground,
 And dark is the gloom of the night.

Lone wanders the trav'ler a shelter to find,

“ Whilft thro' the sharp hawthorn still blows the cold wind.”

III.

No comfort the wild woods afford,
 No shelter the trav'ler can see—
 Far off are his bed and his board
 And his home, where he wishes to be.

His hearth's cheerful blaze still engages his mind

“ Whilft thro' the sharp haw thorn keen blows the cold wind.”

N. B. The last eight Songs were set to Music by the Author.

A N

O R A T I O N,

WHICH MIGHT HAVE BEEN DELIVERED

TO THE

STUDENTS IN *ANATOMY*,

ON THE

L A T E R U P T U R E

BETWEEN

THE TWO SCHOOLS IN THIS CITY.

The ARGUMENT.

ADDRESS—the folly and danger of dissent—the Orator enumerates the enemies of the fraternity—reminds them of a late unseasonable interruption—a night scene in the Potter's Field—laments the want of true zeal in the brotherhood—and boasts of his own—the force of a ruling passion—the earth considered as a great animal—the passion of love not the same in a true son of Esculapius as in other men—his own amour—a picture of his mistress in high taste—shows his learning in the description of her mouth, arm and hand—his mistress dies—his grief—and extraordinary consolation—his unparallel'd fidelity—he apologizes for giving this history of his amour—the great difficulties Anatomists have to encounter in the present times, arising from false delicacy, prejudice and ignorance—a strong instance in proof that it was not so formerly—curious argument to prove the inconsistency of the present opinions respecting the practice—he mentions many obstacles in the road to science—and reproaches them for their intestine broils, at a time when not only popular clamour is loud, but even the powers of government are exerted against them—he then encourages his brethren with hopes of better times, founded on the establishment of the College of Physicians—is inspired with the idea of the future glory of that institution—and prophesies great things.

A N

O R A T I O N,

WHICH MIGHT HAVE BEEN DELIVERED, &c.

FRRIENDS and associates ! lend a patient ear,
 Suspend intestine broils and reason hear.
 Ye followers of —— your wrath forbear—
 Ye sons of —— your invectives spare ;
 The fierce dissention your high minds pursue
 Is sport for others—ruinous to you.

SURELY some fatal influenza reigns,
 Some epidemic *rabies* turns your brains—
 Is this a time for brethren to engage
 In public contest and in party rage ?
 Fell discord triumphs in your doubtful strife
 And, smiling, whets her anatomic knife ;
 Prepar'd to cut our precious limbs away
 And leave the bleeding body to decay—

SEEK ye for foes !—alas, my friends, look round,
 In ev'ry street, see num'rous foes abound !

Methinks I hear them cry, in varied tones,
 " Give us our father's—brother's—sister's bones."
 Methinks I see a mob of sailors rise—
 Revenge!—revenge! they cry—and damn their eyes—
 Revenge for comrade Jack, whose flesh they say,
 You minc'd to morsels and then threw away.
 Methinks I see a black infernal train—
 The genuine offspring of accursed *Cain*—
 Fiercely on you their angry looks are bent,
 They grin and gibber dangerous discontent
 And seem to say—" Is there not meat enough ?
 " Ah ! massa cannibal, why eat poor CUFF ?"
 Ev'n hostile watchmen stand in strong array
 And o'er our heads their threat'ning staves display,
 Howl hideous discord thro' the noon of night
 And shake their dreadful lanthorns in our sight.

SAY, are not these sufficient to engage
 Your high wrought souls eternal war to wage ?
 Combine your strength these monsters to subdue
 No friends of science and sworn foes to you ;
 On these—on these your wordy vengeance pour
 And strive our fading glory to restore.

AH ! think how, late, our mutilated rites
 And midnight orgies, were by sudden frights
 And loud alarms profan'd—the sacrifice,
 Stretch'd on a board before our eager eyes,
 All naked lay—ev'n when our chieftain stood
 Like a high priest, prepar'd for shedding blood ;
 Prepar'd, with wondrous skill, to cut or slash

The gentle siver or the deep drawn gash ;
 Prepar'd to plunge ev'n elbow deep in gore
 ! Nature and nature's secrets to explore—
 Then a tumultuous cry—a sudden fear—
 Proclaim'd the foe—th' enraged foe is near—
 In some dark hole the hard got corse was laid
 And we, in wild conclusion, fled difinay'd.

THINK how, like brethren, we have shar'd the toil
 When in the Potter's Field * we fought for spoil,
 Did midnight ghosts and death and horror brave—
 To delve for science in the dreary grave.--
 Shall I remind you of that awful night
 When our compacted band maintain'd the fight
 Against an armed host ?—fierce was the fray
 And yet we bore our sheeted prize away.
 Firm on a horse's back the corse was laid,
 High blowing winds the winding sheet display'd ;
 Swift flew the steed—but still his burthen bore—
 Fear made him fleet, who ne'er was fleet before ;
 O'er tombs and funken graves he cours'd around,
 Nor ought respected consecrated ground,
 Mean time the battle rag'd—so loud the strife,
 The dead were almost frighten'd into life—
 Tho' not victorious, yet we scorn'd to yield,
 Retook our prize and left the doubtful field.

In this degenerate age, alas ! how few
 The paths of science with true zeal pursue ?
 Some trifling contest, some delusive joy
 Too oft th' unsteady minds of youth employ.

* The Negro Burial ground.

For me—whom ESCULAPIUS hath inspir'd---
 I boast a soul with love of science fir'd ;
 By one great object is my heart possest---
 One ruling passion quite absorbs the rest---
 In this bright point my hopes and fears unite ;
 And one pursuit alone can give delight.

To me things are not as to vulgar eyes,
 I would all nature's works anatomize---
 This world a living monster seems, to me,
 Rolling and sporting in th' aerial sea ;
 The soil encompasses her rocks and stones
 As flesh in animals encircles bones.
 I see vast ocean, like a heart in play,
 Pant *systole* and *diastole* ev'ry day,
 And by unnumber'd *venous* streams supply'd
 Up her broad rivers force th' *arterial* tide. [shew
 The world's great lungs, monsoons and trade-winds
 From east to west, from west to east they blow
 Alternate respiration—
 The hills are pimples which earth's face defile,
 And burning *Ætna*, an eruptive boil :
 On her high mountains *hairy* forests grow,
 And *downy* grafs o'erspreads the vales below ;
 From her vast body perspirations rise
 Condense in clouds and float beneath the skies.
 Thus fancy, faithful servant of the heart,
 Transforms all nature by her magic art.

Ev'n mighty LOVE, whose pow'r all pow'r controuls,
 Is not, in me, like love in other souls---

Yet

Yet I have lov'd---and CUPID's subtle dart
 Hath thro' my *pericardium* pierc'd my heart.
 BROWN CADAVERA did my foul ensnare,
 Was all my thought by night and daily care---
 I long'd to clasp, in her transcendent charms,
 A living skeleton within my arms.

LONG, lank and lead, my CADAVERA stood,
 Like the tall pine, the glory of the wood---
 Oft times I gaz'd, with learned skill to trace
 The sharp edg'd beauties of her bony face---
 There rose *Os frontis* prominent and bold,
 In deep sunk *orbits* two large eye-balls roll'd,
 Beneath those eye-balls, two arch'd bones were seen
 Whereon two flabby cheeks hung loose and lean ;
 Between those cheeks, protuberant arose,
 In form triangular, her lovely nose,
 Like EGYPT's pyramid it seem'd to rise,
 Scorn earth, and bid defiance to the skies ;
 Thin were her lips, and of a fallow hue,
 Her open mouth expos'd her teeth to view ;
 Projecting strong, protuberant and wide
 Stood *incisores*---and on either side
 The *canine* rang'd, with many a beauteous flaw,
 And last the *grinders*, to fill up the jaw---
 All in their *alveoli* fix'd secure,
 Articulated by *gomphosis* sure.
 Around her mouth, perpetual smiles had made
 Wrinkles wherein the loves and graces play'd ;
 There, stretch'd and rigid by continual strain,
 Appear'd the *zygomatic* muscles plain,

And

And broad *montanus* o'er her peeked chin
 Extended to support the heav'nly grin.
 In amorous dalliance of I stroak'd her arm,
 Each rising muscle was a rising charm.
 O'er the *flexores* my fond fingers play'd,
 I found instruction with delight convey'd---
 There *carpus*, *cubitus* and *radius* too
 Were plainly felt and manifest to view.
 No muscles on her lovely hand were seen,
 But only bones envelop'd by a skin.
 Long were her fingers and her knuckles bare,
 Much like the claw-foot of a walnut chair.
 So plain was complex *metacarpus* shewn
 It might be fairly counted bone by bone.
 Her slender *phalanxes* were well defin'd,
 And each with each by *ginglymus* combin'd.
 Such were the charms that did my fancy fire
 And love---chaste scientific love inspire.

AT length my CADAVERA fell beneath
 The fatal stroke of all subduing death---
 Three days in grief---three nights in tears I spent,
 And sighs incessant gave my sorrows vent.

FEW are th' examples of a love so true---
 Ev'n from her death I consolation drew,
 And in a secret hour approach'd her grave
 Resolv'd her precious corse from worms to save;
 With active haste remov'd the incumbent clay,
 Seiz'd the rich prize and bore my love away.

HER

HER naked charms now lay before my sight,
 I gaz'd with rapture and supreme delight,
 Nor could forbear, in ecstasy, to cry---
 Beneath that shrivell'd skin what treasures lie !
 Then feasted to the full my amorous soul,
 And skinn'd and cut and flash'd without controul.

'Twas then I saw, what long I'd wish'd to see,
 That heart which panted oft for love and me---
 In detail view'd the form I once ador'd,
 And nature's hidden mysteries explor'd.

ALAS ! too truly did the wise man say
 That flesh is grass, and subject to decay---
 Not so the bones---of substance firm and hard
 Long they remain th' anatomist's reward.
 Wise nature, in her providential care,
 Did, kindly, bones from vile corruption spare,
 That sons their fathers' skeletons might have
 And heav'n born science triumph o'er the grave.

My true love's bones I boil'd---from fat and lean
 These hands industrious scrap'd them fair and clean,
 And every bone did to its place restore,
 As nature's hand had placed them long before ;
 These fingers twist'd ev'ry pliant wire
 With patient skill, urg'd on by strong desire.
 Now what remains of *CADAVERA*'s mine,
 Securely hanging in a case of pine.

OFTTIMES I sit and contemplate her charms,
 Her nodding skull and her long dangling arms,
 'Till quite inflam'd with passion for the dead
 I take her beauteous skeleton to bed---
 There stretch'd, at length, close to my faithful side
 She lies all night a lovely grinning bride---

Excuse, my friends, this detail of my love,
 You must th' intent, if not the tale approve ;
 By facts exemplary I meant to shew
 To what extent a genuine zeal will go.
 A mind, so fix'd, will not be drawn aside
 By vain diffentions or a partial pride ;
 But ev'ry hostile sentiment subdued
 And keep the ruling passion still in view.

FALSE delicacy---prejudices strong,
 Which no distinctions know 'twixt right and wrong,
 Against our noble science spend their rage
 And mark th' ignorance of this vulgar age.

'TIME was, when men their living flesh would spare
 And to the knife their quiv'ring *nates* bare,
 That skilful surgeons noses might obtain
 For noses lost---and cut and come again---
 But now the *living* churlishly refuse
 To give their dead relations to our use ;
 Talk of decorum---and a thousand whims---
 Whene'er we hack their wives' or daughters' limbs ;
 And yet their tables daily they supply
 With the rich fruits of sad mortality ;
 Will pick, and gut and cook a chicken's corse,
 Dissect and eat it up without remorse ;
 Devouring fish, flesh, fowl, whatever comes,
 Nor fear the ghosts of murder'd hecatombs.

Now where's the difference?---to th' impartial eye
 A leg of mutton and a human thigh
 Are just the same---for surely all must own
 Flesh is but flesh, and bone is only bone ;

And

And tho' indeed, some flesh and bone may grow
 To make a monkey---some to make a beau,
 Still the materials are the same, we know.
 Nor can our anatomic knowledge trace
 Internal marks distinctive of our race.---

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WHENCE, then, these loud complaints--- these hoists
 Combin'd our useful labours to oppose? [of foes
 How long shall foolish prejudices reign?
 And when shall reason her just empire gain?

AH! full of danger is the up-hill road,
 That leads the youth to learning's high abode:
 His way thick mists of vulgar errors blind,
 And sneering satire follows close behind;
 Sour envy strews the rugged path with thorns,
 And lazy ignorance his labour scorns.

Is this a time, ye brethren of the knife,
 For civil contest and internal strife?
 When loud against us gen'ral clamours cry,
 And persecution lifts her lash on high?
 When government---that many headed beast---
 Against our practice rears her horrid crest,
 And, our nocturnal access to oppose,
 Around the dead a penal barrier * throws?
 'To crush our schools her awful pow'r applies,
 And ev'n forbids the gibbet's just supplies. †

YET in this night of darkness, storms and fears,
 Behold one bright benignant star ‡ appears---

Long

* A law past at New-York, making it penal to steal bodies from the burial ground.

† The wheelbarrow of Pennsylvania.

‡ The Medical College.

Long may it shine, and, e'er it's course is run,
 Increase, in size and splendour, to a sun!--
 Methinks I see this sun of future days,
 Spread far abroad his *diplomatic* rays---
 See life and health submit to his controul,
 And like a planet, *death* around him roll.

METHINKS I see a stately fabric rise,
 Rear'd on the skulls of these our enemies :
 I see the bones of our invet'rate foes
 Hang round its walls in scientific rows.
There solemn sit the learned of the day
 Dispensing death with uncontrouled sway,
 And by *prescription* regulate with ease
 The sudden crisis or the slow disease.

THEN shall physicians their millenium find,
 And reign the real sov'reigns of mankind :
 Then shall the face of this vile world be chang'd---
 And nature's healthful laws all new arrang'd---
 In min'ral powders all her dust shall rise,
 And all her insects shall be Spanish flies :
 In medicated potions streams shall flow,
 Pills fall in hail-storms, and sharp salts in snow ;
 In ev'ry quagmire bolusses be found,
 And slimy cataplasms spread the ground--
 Nature herself assume the chymist's part,
 And furnish poisons unsublim'd by art.

THEN to our schools shall wealth in currents flow,
 Our theatres no want of subjects know ;
 Nor laws nor mobs th' Anatomist shall dread,
 For graves shall freely render up their dead.











