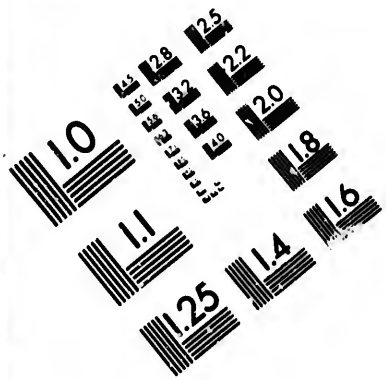

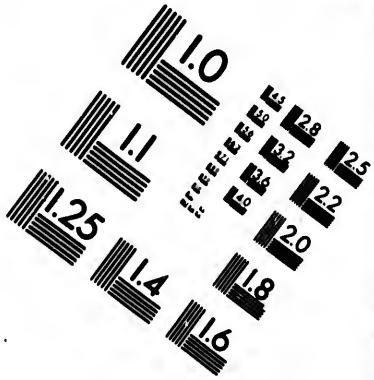

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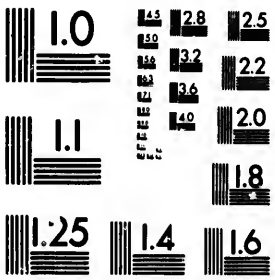

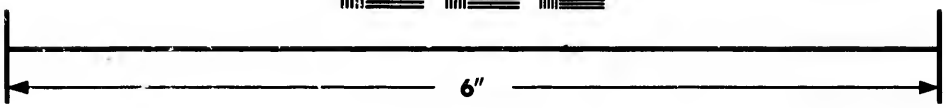

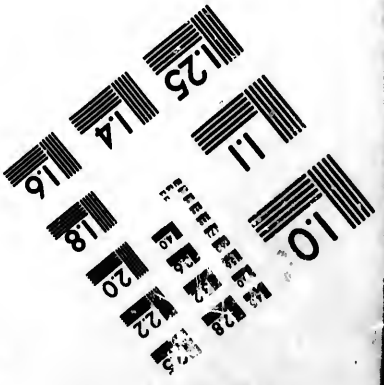

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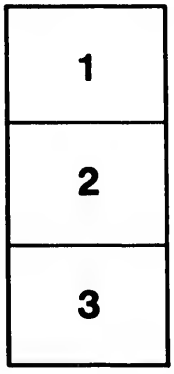

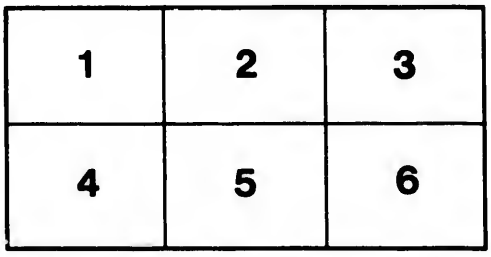

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THE

CLAIM AND ANSWER

WITH THE

SUBSEQUENT PROCEEDINGS

IN THE CASE OF

ANDREW ALLEN, ESQUIRE,

AGAINST

The United States.

UNDER THE SIXTH ARTICLE OF THE TREATY OF AMITY, COMMERCE, AND NAVIGATION, BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA.

PHILADELPHIA:

PRINTED BY JAMES HUMPHREYS, OPPOSITE THE BANK OF THE UNITED STATES.

1799.

THE CLAIM.

To the COMMISSIONERS for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, concluded between His Britannic Majesty and the United States of America, on the nineteenth Day of November, in the Year of our Lord one thousand seven hundred and ninety-four.

ANDREW ALLEN, *of London, in the Kingdom of Great-Britain,*

RESPECTFULLY SHEWETH,

THAT he is, and from his birth ever has been, a subject of the King of Great-Britain, and under the allegiance of the said King:—That on the sixth day of March, in the year of our Lord one thousand seven hundred and seventy eight, the Legislature of the Commonwealth of Pennsylvania passed a law, whereby they attainted him the said *Andrew Allen* of high treason against the said Commonwealth, for his adherence to his said Majesty, and confiscated and forfeited to the use of the said Commonwealth, under certain terms, all the estate real and personal, of him the said *Andrew Allen*, within the said Commonwealth.

That

That at the time of the ſaid confiſcation and forfeiture, divers perſons within the ſaid Commonwealth of Pennſylvania, were juſtly indebted to him the ſaid *Andrew*, in large ſums of money, and in conſequence of the ſaid act of Aſſembly, paid the ſame to perſons acting under the Executive Authority of Pennſylvania and the ſaid attainder, a ſchedule of whoſe names, and of the ſums of money by them ſo paid reſpectively, is hereto annexed; which ſaid debts, if they had not been ſo paid, would now amount, principal and intereſt, to the ſum of fifteen thouſand and eighty-three pounds thirteen ſhillings and three pence three farthings:—That by the ſaid law and other acts of Aſſembly of the ſaid Commonwealth, all perſons ſo paying ſuch ſums of money, were diſcharged from the payment thereof to him the ſaid *Andrew Allen*, and conſequently, he is diſabled from recovering the ſame in the ordinary courſe of judicial proceedings:—Your Memorialiſt therefore prays, that this his Claim may be received for the ſaid ſum of fifteen thouſand and eighty-three pounds thirteen ſhillings and three pence three farthings, Pennſylvania currency, and ſuch award may be made thereon as equity and juſtice ſhall require.

November 28, 1798.

Certificate of TREASURY *Payments.*

I CERTIFY, that upon ſearching the record of the proceedings of the late Supreme Executive Council of the Commonwealth of Pennſylvania, it appears, that the following named perſons obtained from the ſaid Council, patents in the name and by the authority of the Commonwealth for the ſeveral tracts of land annexed to their names reſpectively, ſituate in the county of Northampton, and held in right of *Andrew Allen*, Eſquire, who was by an act of the General Aſſembly, paſſed the ſixth day of March, 1778, attainted of high treaſon; which tracts were decreed by the Supreme Court of this State, in purſuance of the ſaid act of Aſſembly, to the ſeveral Claimants, upon their paying into the public Treaſury *the ſeveral balances of purchaſe monies (with intereſt) which were made payable by inſtalments, under articles of agreement entered into by them with the ſaid Andrew Allen, previous to his attainder of high treaſon, for the purchaſe of the ſaid tracts of land*, viz.

Names.

Names.	*Quantity of Land.* Acres.	Perches.	*Balance of purchaſe Money.*			*Date of Patent.*	
Samuel Brown,	420	66	£.1473	1	6	16*th Dec.*	1784.
John Sterling,	183	110	800	0	0	1*ſt*	1785.
Margaret Wilſon and Children,	218		897	3	0		
James Clyde,	250		694	15	0	5*th*	
Samuel Wilſon,	210	130	1016	2	3	17*th May,*	1785.
George Wolffe,	101	80	348	0	0	20*th Sept.*	
John Clyde,	100		289	17	6	1*ſt March,*	1786.
Joſeph Horner,	182	62	832	19	0	20*th Oct.*	
Hugh Horner,	150		240	0	0	24*th June.*	

JAMES TRIMBLE,
Deputy Secretary.

SECRETARY'S OFFICE,
Philadelphia, November 27, 1798.

Copy of one of the Decrees of the Supreme Court of Pennſylvania.

SAMUEL WILSON,
vs.
ANDREW ALLEN'S ESTATE. } DECREE.

BE it remembered, that on the 13th day of April 1779, at the city of Philadelphia, *Samuel Wilſon* of the county of Northampton and ſtate of Pennſylvania, preferred a Claim to the honorable *Thomas M'Kean, William Auguſtus Atlee,* and *John Evans,* eſquires, Juſtices of the Supreme Court of the Commonwealth of Pennſylvania, againſt the Eſtate of *Andrew Allen,* eſquire, one of the perſons attainted of high treaſon by an act of Aſſembly of ſaid Commonwealth, in the words following, to wit: To the honorable *Thomas M'Kean,* eſquire, Chief Juſtice of the Commonwealth of Pennſylvania, the Claim of *Samuel Wilſon,* of the county of Northampton, and State of Pennſylvania, humbly repreſents to your Honor, THAT WHEREAS, by articles of agreement duly executed under hand and ſeal, between *Andrew Allen,* eſquire, late of the ſtate aforeſaid, of the one part, and *Samuel Wilſon,* of the county aforeſaid, of the other

other part, it is covenanted and agreed by and between the ſaid parties in manner and form following, viz. " Articles of agreement made at Philadel-" phia the 24th day of March, Anno Domini 1775, between *Andrew Allen* of " the city of Philadelphia of the one part, and *Samuel Wilſon* of Cheſter coun-" ty of the other part. The ſaid *Andrew Allen* hath agreed and covenanted, " to and with the ſaid *Samuel Wilſon*, to convey to him a certain tract of land " ſituate on the Monackeſy creek in Allen townſhip, in the county of North-" ampton, ſurveyed for and ſuppoſed to contain eighteen hundred and fifty-three " acres of land, at the rate of four pounds per acre, the uſual allowance of ſix " per cent. not to be reckoned, one fourth part of the purchaſe money to be " paid on the firſt day of May in the year of our Lord 1776, free of intereſt " till that time, and upon the receipt of this money, the ſaid *Andrew* doth co-" venant to make the ſaid *Samuel* a good and legal title to the ſame: and if " the ſaid *Samuel* ſhould ſell to any other parts of the ſaid land, the ſaid *An-" drew* will make a title to each of the purchaſers in their own names, the ſaid " *Samuel* or the ſaid purchaſer, mortgaging the ſaid land, or their ſeveral parts, " to the ſaid *Andrew*, for the remaining three-fourths of the original purchaſe " money, with intereſt from the ſaid day of May, agreeable to their ſeveral " ſhares; and the ſaid *Samuel* doth covenant to pay to the ſaid *Andrew* for the " ſaid land in the manner above-mentioned, and at the rate aforeſaid; and for " the true performance of the premiſes, the ſaid parties bind themſelves, their " heirs, executors, and adminiſtrators, in the ſum of four hundred pounds to " each other, their executors and adminiſtrators firmly." AND WHEREAS the ſaid *Andrew Allen* afterwards, to wit, the ſixth day of March, in the year of our Lord one thouſand ſeven hundred and ſeventy-eight, was duly attainted of high treaſon by an act of the Aſſembly of the Commonwealth aforeſaid, and all the eſtate real and perſonal of the ſaid *Andrew Allen*, of what nature or kind ſoever which the ſaid *Andrew Allen* was ſeized of or poſſeſſed on the fourth day of July, 1776, or any other perſon to his uſe or in truſt for him, are by the ſaid law declared to be forfeited to the uſe of the State aforeſaid: And whereas by the ſaid act of Aſſembly it is provided, that any perſon having any right, title, intereſt, uſe, truſt, charge, or incumbrance whatſoever, in law or equity, upon any meſſuages, lands, tenements, &c. thereby veſted in the State, by any ſettlement, conveyance or incumbrance, which was binding on the forfeiting perſons, and might have affected their eſtates before the times whereon the ſame ſhall be veſted in the State, ſhall enter his ſaid claim before your Honors, and the Supreme Court of the Commonwealth aforeſaid are empowered to hear and determine ſaid caſe, and to award final decrees in all ſuch caſes: And whereas it appears from the aforeſaid recited articles of agreement, that if the ſaid *Samuel Wilſon* ſhould ſell any part of the ſaid eighteen hundred and fifty-three acres to other perſons, the ſaid *Andrew Allen* covenants to make a good title to each of ſaid purchaſers in their reſpective names: And whereas the ſaid claimant in purſuance of ſaid clauſe, did ſell to ſundry perſons part of the aforeſaid tract of land, who have ſince the ſaid ſales entered into contracts with the ſaid *Andrew Allen* for the payment of the purchaſe money thereof, and hath alſo reſerved to his own uſe about ſix hundred acres of the aforeſaid tract, whereon the ſaid *Samuel Wilſon* hath erected a good dwelling houſe and barn, and hath made divers other improvements: Wherefore the ſaid *Samuel Wilſon* prays your Honors will be pleaſed to take the premiſes into conſideration, and by a

Decree

Decree of this Court confirm his title to the aforeſaid ſix hundred acres of land ſo as aforeſaid occupied and enjoyed, upon his paying to the uſe of the State the purchaſe money due therefor, which he is ready and willing to do if your Honor ſhall ſo determine, and the ſaid *Samuel Wilſon* offers himſelf to prove the premiſes in ſuch manner as to your Honors ſhall ſeem moſt proper.

In the preſence of
Henry Dennis,
Jacob Ruſh.

SAML. WILSON.
Philad. April 9th, 1799.

AND the ſaid Juſtices taking the ſame into conſideration, as alſo the teſtimony both verbal and written exhibited to them in ſupport thereof; do adjudge and decree to the ſaid *Samuel Wilſon*, his heirs and aſſigns, two hundred and ten acres and one hundred and thirty perches of land and allowance, being only part of the ſaid tract of ſix hundred acres of land claimed as aforeſaid by the ſaid *Samuel Wilſon*, which ſame land ſo decreed to the ſaid *Samuel Wilſon*, is butted and bounded in manner following, that is to ſay, bounded by land of the Widow Wilſon on the north, of Samuel Brown on the weſt, of George Wolf junior on the ſouth, and Monackeſy creek on the eaſt, beginning at a ſtone in the centre of Monackeſy creek aforeſaid the ſouth eaſt corner of the Widow Wilſon's land, thence weſt two hundred and twenty-nine perches to a poſt in the line of Samuel Browns land, thence ſouth one degree weſt along the ſaid Samuel Brown's land one hundred and eighty three perches to a poſt, thence eaſt one hundred and ſixty three perches to a in the centre of Monackeſy creek aforeſaid, thence up the centre of the ſame creek according to the ſeveral courſes thereof to the place of beginning; containing two hundred and ten acres and one hundred and thirty perches of land, beſides the uſual allowance of ſix acres per cent. for roads and highways, &c. He the ſaid *Samuel Wilſon* his heirs or aſſigns, paying and fully ſatisfying to his Excellency the Preſident and the Supreme Executive Council of the ſaid Commonwealth, or to ſuch other perſon or perſons as they ſhall depute and authoriſe, or have deputed and authoriſed to receive the ſame, at the rate of four pounds for every acre of the ſaid two hundred and ten acres and one hundred and thirty perches of land, decreed to the ſaid *Samuel Wilſon* as aforeſaid, with lawful intereſt for the ſame, from the firſt day of May one thouſand ſeven hundred and ſeventy-ſix.

A true copy of the record,

EDWARD BURD, *Proth.*

Certified copies of Decrees in favor of all the other purchaſers, and ſundry other documents, are filed in proof of the debts for which compenſation is claimed, but they are not neceſſary to the right underſtanding of the merits of the Claim.

To

To the COMMISSIONERS for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, concluded between his Britannic Majeſty and the United States of America, on the nineteenth Day of November, in the Year of our Lord one thouſand ſeven hundred and ninety-four.

THE ANSWER

On the part of the United States to the Memorial and Claim of ANDREW ALLEN, *Eſquire.*

IN the Claim of Mr. *Allen* the following circumſtances appear neceſſary to be ſtated by the Agent for the United States, in order that the Board may clearly comprehend the defence ſet up on their part.

Mr. *Allen* in the year 1772, by articles of agreement entered into between him and *Hugh Horner* and *John Clyde*, agreed to ſell to the ſaid *Horner* and *Clyde* two ſeveral tracts of land ſituated in the county of Northampton, in the then province now State of Pennſylvania, on their paying him the purchaſe money agreed on for the ſame at two periods mentioned in the ſaid agreements. It was further agreed, that on the payment of the firſt ſum of money mentioned in the agreement, that the claimant would convey to the ſaid *Horner* and *Clyde*, the legal eſtate in the ſaid land, they giving him a mortgage on the land for the remainder of the purchaſe money. Payments appear to have been afterwards made by the ſaid *Horner* and *Clyde* to the claimant, but not to the amount of the purchaſe money.

It appears from the documents filed with the memorial, that the claimant made ſimilar agreements with ſundry other perſons for lands in the county of Northampton, whoſe demands are alſo the ſubject of the preſent claim.

By an act paſſed by the Legiſlature of Pennſylvania, 6th March, 1778, the claimant was by name convicted and attainted of high treaſon and all his eſtate real and perſonal forfeited to the State. It is provided by the ſame act, that all perſons claiming any intereſt in the eſtates ſo forfeited, may make their claims before

before the Juſtices of the Supreme Court in writing, who are to proceed in a ſummary way to examine into the claims of ſuch perſons, to ſee whether they have any right, title, intereſt, or charge, in law or in equity, on any lands veſted in the State by that act binding on the perſons whoſe eſtates are forfeited by the act, and to make final deciſions in ſuch caſes accordingly.

In conſeqnence of this proviſion in the law, the ſeveral purchaſers of land from the claimant were decreed by the Supreme Court the ſeveral tracts of land purchaſed from the claimant, on their paying to the ſtate the purchaſe money for the ſame which remained due with intereſt. For this money ſo paid, the preſent claim is preferred againſt the United States.

In the year 1792 a pardon was granted by the Governor of Pennſylvania, and the ſame accepted by the claimant. A copy of which accompanies this anſwer.

The defence of the United States to this claim reſts on the following grounds.

1ſt. That the claimant is not of that deſcription of perſons capable of claiming compenſation in this caſe from the United States by virtue of the Treaty of Amity, he being an American attainted of high treaſon, which attainder remained in full force at the Treaty of Peace, and ſo continued until he received a pardon in the year 1792.

2d. If the claimant was comprehended within the Treaty of Peace, then the monies due to the claimant being an equitable charge on the lands forfeited to the State, are within the proviſion of the laſt clauſe of the *5th* article of that Treaty, and thoſe lands have always remained liable to ſatisfy the ſame, and are now equal to the payment of all the monies which are in juſtice due to the claimant, which may be recovered in the ordinary courſe of juſtice, on the Equity ſide of the Circuit Court of the United States, holden in the Diſtrict of Pennſylvania.

3d. No intereſt during the war under the particular circumſtances of this caſe is juſtly due to the claimant.

On the firſt head of defence no obſervation will be made. On the ſecond head of defence, if the firſt is over-ruled, the Agent prays leave to obſerve,

At the time of the ſale of theſe lands it was the intention of the parties to the ſale, that the lands ſhould remain the ultimate ſecurity for the payment of the purchaſe money. The ſeveral agreements ſo far as they are recited in the record, plainly diſcover this to be the caſe; for the ſeveral purchaſers on the payment of the firſt part of the purchaſe money, are to receive good and legal titles to the lands, which they are immediately to mortgage for ſecuring the balance: The legal eſtate never having been conveyed, the mortgages could not be given. The intention and meaning of parties to contracts or agreements is the equity which muſt rule the caſe, and will uniformly govern tribunals authoriſed to do equity in their deciſions upon it. The intention of the Claimant was to part with the land, the intention of the purchaſers was to inveſt in

 themſelves

themſelves the fee ſimple, and an immediate conveyance of the legal eſtate would have been made, had the purchaſers been able to have given a ſecurity more ſatisfactory than the land. The legal eſtate was then retained in the Claimant merely for the purpoſe of ſecurity, and was to have been parted with on the payments being made, and a mortgage taken in return. Such appearing to be the juſtice and truth of this caſe, the Claimant, if his right is within the Treaty of Peace, has unqueſtionably an equitable Claim on theſe lands for the purchaſe money, they were looked to at the time of ſale as the ultimate ſecurity for it, and the Claimant would have been obliged on the compliance with the agreements by the purchaſers to have made them titles conformably to their agreements. Whatever by the rules of equity is agreed to be done muſt be conſidered as done. It was agreed that the land ſhould be the ſecurity for the purchaſe money, and this principle of equal juſtice cannot be ſatisfied unleſs theſe lands are now ſo conſidered. By the *fifth* Article of the Treaty of Peace it is provided, " that all perſons who have any intereſt in confiſcated lands, either " by debts, marriage ſettlements, or *otherwiſe*, ſhall meet with no lawful impediment in the proſecution of their juſt rights."

This Article expreſsly revives the remedy for theſe debts, if the confiſcation and attainder were annulled by the Treaty of Peace; and the Claimant may purſue it, by reſorting to the equity ſide of the Federal Court, which has juriſdiction over ſuch demands. They are the proper ſubjects for their cognizance, and in that court juſtice will be truly and honourably adminiſtered, and the rights of the Claimant, whatever they be, under the Treaty of Peace faithfully regarded.

Having ſhewn that there is now a remedy for theſe demands in the ordinary courſe of juſtice, and that there is an ample fund as it is believed for the payment of them, it ſeems unneceſſary to obſerve on the character of the Claimant and his ability, notwithſtanding his former attainder, to maintain ſuits.

All which is moſt reſpectfully ſubmitted,

JOHN READ, *jun.*

Agent for United States.

COMMISSIONERS' OFFICE.
Philadelphia, March 12, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Caſe of ANDREW ALLEN.

On motion of Mr. SITGREAVES,

ORDERED, That the General Agent for claimants ſet forth in his reply in this caſe, ſuch argument as he may think neceſſary for obviating the following points, in addition to thoſe ſuggeſted by the anſwer on the part of the United States, to wit,

That the title to the lands having been in the claimant at the time of his attainder, the confiſcation and forfeiture attached upon the lands, and not upon the conſideration money covenanted to be paid for the ſame, by the perſons who had entered into articles with the claimant for the purchaſe thereof:—that confiſcations of lands during the war were not impaired or affected by any ſtipulation of the Treaty of 1783, but remained as effectual after the Peace as before:—That by the 5th article of that Treaty it was agreed to recommend to the ſeveral ſtates, that ſuch confiſcated lands ſhould be reſtored to the former proprietors, "they refunding to any perſons who may be now in poſſeſſion, the *bona fide* "price (where any has been given) which ſuch perſons may have paid on pur- "chaſing any of the ſaid lands ſince the confiſcations:"—That any demand by the claimant againſt the ſaid purchaſers, for the conſideration money unpaid on the articles of agreement aforeſaid, would be incompatible with the ſpirit of the condition or limitation juſt recited, inaſmuch as the ſums thus unpaid to the claimant, and for which he prays an award to be made in his favour, were preciſely the ſums paid by the ſaid purchaſers for the conveyances they received from the ſtate after the confiſcation, and which ſums muſt have been refunded to them by the claimant

claimant, if reſtitution of the lands had been made to him agreeably to the recommendation aforeſaid:—That, as the ſeveral ſums for which this claim is preferred were agreed to be paid in conſideration of covenants on the part of the claimant to convey the ſaid lands; and as the confiſcation diveſted the title of the claimant to the ſame lands, by which it became impoſſible for him to perform his covenants; the conſideration of the ſaid agreements failed on his part, and the purchaſers were thereby diſcharged from the covenant on their part:—And that the ſeveral matters herein ſuggeſted, do not conſtitute a lawful impediment to the recovery of a *bona fide* debt, within the true intent and meaning of the 4th article of the Treaty of Peace.

Extract from the Minutes,

G. EVANS, *Secretary.*

To the COMMISSIONERS for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majeſty and the United States of America.

THE REPLY

Of Andrew Allen, *to the Anſwer on the part of the United States, and to the points ſuggeſted in the order of the Board of the 12th of March* 1799, *in his Claim.*

THE real ſtate of this Claim, and the true conſtruction of the latter clauſe of the *fifth* article of the Treaty of Peace, ſeem to have been very much miſtaken by the Agent for the United States.

It is a fact not to be diſputed or denied, that in this caſe the Legiſlature of Pennſylvania proceeded againſt the Claimant as *an inhabitant or ſubject of Pennſylvania*, and confiſcated his whole eſtate real and perſonal, *debts included*;—that by way of encouragement to his debtors to diſcover the unrecorded debts due to him, ſuch debtors were to be diſcharged of the entire debt, on payment of three fourth parts of it into the Treaſury, and a penalty of double the amount was impoſed on thoſe who neglected to make ſuch diſcovery.—One uniform train of deciſions from Maſſachuſetts to Georgia, wherever the plaintiff has been *attainted and his*

his eſtate confiſcated, will juſtify the aſſertion, *that at no period, from the peace to the preſent hour*, could ſuch plaintiff ever ſuſtain a ſuit, either at law, or in equity, *for the recovery of any ſuch confiſcated debt*, where the ſame was contracted within the State in which the attainder and confiſcation were had: And it is with equal confidence averred, *that not one ſingle Dictum of any Judge in the United States* can be produced in ſupport of the rights of ſuch plaintiffs to *recover ſuch confiſcated debts*. The different deciſions heretofore referred to in the claim of Dr. *Inglis*, will be remarked upon in the courſe of this reply, rather more particularly than has hitherto been done, and ſome other caſes cited to the ſame point; and it will be ſhewn, that theſe deciſions upon legiſlative attainders have been equally againſt the plaintiffs, who adhered to their native allegiance from the commencement of the diſturbances between the two countries, and openly and avowedly joined the Britiſh ſtandard long before the declaration of independence, and while Congreſs, and every Legiſlature and inhabitant in the country, acknowledged their allegiance to the Britiſh crown, as againſt thoſe who did not withdraw until after that declaration. Whatever controul the Courts of this country might have, by writs of error or otherwiſe, over *attainders by proclamations of Executives exceeding the ſtrict letter of a delegated authority*, or attainders by *judicial proceſs having error apparent on the record*, yet even theſe could not be drawn in queſtion collaterally in an action of debt, and in no ſhape whatever can the *omnipotence of the Legiſlature attainting individuals by name*, be queſtioned; the act itſelf is concluſive in the courts, and not to be contradicted; the party attainted will not be permitted to ſhew that he was *not a ſubject of the State*; the law has operated upon him as a traitor, and the confiſcation is the puniſhment of what *one* government calls a *crime*, and the *other* government looked upon as a ſacred and indiſpenſible *duty*.

While it will be thus contended and clearly ſhewn, that Mr. *Allen* is without any remedy either at law or in equity to recover the debts due to him, in the Courts of the debtor's country, and that he is prevented from a recovery of the ſame by impediments *created by law and not by the creditor*, it will alſo be inſiſted upon and ſhewn, that from his birth he has been a *real Britiſh ſubject*, that he was ſuch at the Treaty of Peace, that never before or ſince has he transferred his allegiance to any other power under heaven, that by the law of nature and nations he had a right to take the part he did, and that by that act and at that time he was guilty of no offence againſt the ſtate of Pennſylvania.

As the General Agent for Claimants expects to eſtabliſh beyond a doubt, both by the law of nature and nations, by the conſtitution and laws of Great Britain, by the laws of Pennſylvania, and by the deciſion of the Board in a ſimilar caſe, that Mr. *Allen* was at the Peace a *Britiſh ſubject* and comprehended in the *fourth* article of the Treaty of Peace, it will here be premiſed, that he is, with every other individual in a ſimilar ſituation, moſt clearly and unequivocally within the ſtipulation of the *ſixth* article of the Treaty of Amity.

At the time of negociating the latter Treaty it was well known to Mr. *Jay*, that Britiſh ſubjects who had reſided in America previous to and at the commencement of the revolution, and had been attainted for adhering to the Britiſh government, could not recover their confiſcated debts—He had himſelf decided the cauſe of *Murray v. Marean*. It

It was well known to Lord Grenville, that no compenſation had been given to the Loyaliſts for their debts, and that the ſtipulation in the *fourth* article of the Treaty of Peace *was the reaſon why no ſuch compenſation was made*; and the deciſions of American Judicatories againſt the recovery of thoſe debts had been the ſubject of repeated complaints to the Britiſh miniſtry.

It may with confidence be aſſerted that nearly all the debts due from American citizens to Britiſh ſubjects at the Peace were comprehended in two claſſes;—

Firſt, To merchants reſident in Great Britain, for goods ſent out to American merchants, or contracted at the ſtores of ſuch Britiſh merchants kept by their factors in the country.

Second, Debts contracted by one Britiſh ſubject to another Britiſh ſubject, both reſident at the time of the contract in the Britiſh American dominions, "under the ſanction of laws common to and binding upon both," and which ſtill remained *bona fide* due, owing and unpaid, although the creditor and debtor had during a revolutionary war taken different ſides, as inclination, convenience, or conſcience, dictated, and although the government of the debtor's country had "taken hold of the debts." While the Crown of Great Britain by a ſolemn act, *deemed eſſential by Congreſs*, acknowledged the independence of the United States, and relinquiſhed all claims to the *government, propriety, and territorial rights of the ſame*, there was no relinquiſhment of the *allegiance* of ſuch of the inhabitants of the colonies, as had *adhered to the ſide of Great Britain*, nor was it in the power of that crown to abandon them, or to ſacrifice their perſonal rights which were "incorporeal," of which "manual occupation could not be had;"—which were "concomitant with the perſon of the creditor, and which could not be extinguiſhed by the Legiſlature of the debtor's country." The rights of thoſe ſubjects were as ſacred and as unalienable by the crown without their conſent, as their allegiance was permanent and unalienable without the aſſent of the crown. There is no riſk in aſſerting, and no difficulty in proving, that every child of Britiſh ſubjects (whether the parents were natives of Great Britain or of the Britiſh American dominions,) born in the United States between the Declaration of Independence and the Treaty of Peace, can hold eſtates either of inheritance or purchaſe in any part of the Britiſh dominions, notwithſtanding thoſe parents uniformly adhered to the American ſide.—That Treaty is the only point of time from which, agreeably to the Britiſh conſtitution and laws, the United States ceaſed to be part of the Britiſh empire. The Loyaliſts therefore were as much Britiſh ſubjects as the merchant who had never been beyond the ſound of Bow Bell, and the recovery of the debts due to them by American citizens was ſecured by the *fourth* article of the Treaty of Peace.

But while the eſtates, rights, and properties, of this claſs of Britiſh ſubjects, which had been confiſcated, entered upon, "*ſold, re-ſold, and paſſed through ſuch "a variety of hands, as to render reſtoration impracticable*" were left to recommendation by the prior part of the *fifth* article, there were certain debts *in which the Loyaliſts were more peculiarly intereſted*, and which were not provided for in the *fourth* article, as the creditor and debtor might not always be on *different ſides*; theſe were particularly the object of the ſtipulation in the latter part of the *fifth* article.

article. It is a well known principle in the law of England and of the United States, that the note, bill, bond, or other contract originating a debt, is the proper evidence of the debt, a mortgage or any ſtrictly legal title to real or other eſtate pledged, and accompanying the ſpecialty or other contract, is only conſidered as a collateral ſecurity; the creditor has his double remedy; he may purſue which he pleaſes; one remedy however is perſonal and tranſitory with the perſon, the other local, with the mortgaged premiſes.—Many of the Loyaliſts attainted by the ſame law for their adherence to the Britiſh government had been friends, neighbours, and had had many pecuniary tranſactions with each other in America, as well as with their fellow ſubjects in Great Britain, and with others who remained attached to the American cauſe and became citizens of the United States. Their real eſtates which had been confiſcated were in many inſtances pledged for the payment of theſe debts. In Georgia, for inſtance, the Legiſlature ſuffered no debts to be paid out of the ſales of confiſcated eſtates, except ſuch as were due to citizens well affected to the cauſe of American Independence. In other States, confiſcated lands were ſold during the war upon credit, and at the times the inſtalments became payable the money had ſunk to very little, and yet the States received the nominal ſums in paper, as they could not avow the depreciation without ſtamping their tender laws, which they were obliged to keep in force, with the character of iniquitous, or without making one law for contracts with the State and its citizens, and leaving in force a different law to regulate contracts between individuals.—With reſpect to the demands againſt theſe confiſcated eſtates, the creditors were called upon to preſent them within limited periods; and when the amounts due to citizens in the country were aſcertained, the depreciated paper of the country *at its nominal amount* was the medium of payment — This in many inſtances was not worth receiving—and the uncancelled evidence of the unſatisfied debt due by the loyaliſt remained with the creditor, while the proper fund to diſcharge it had been ſeized by the State. The ſtipulation in the cloſe of the *fifth* article was neceſſary, in order to compel the very creditors of theſe loyaliſts to reſort to the proper fund for their debts, inſtead of following the perſon of an almoſt ruined debtor, who had ſcarcely any thing but the bounty of his government to ſubſiſt upon; and without this ſtipulation, not even equity could interfere to prevent the creditor from electing his tranſitory action, inſtead of proceſs againſt the property pledged.—Again, if Mr. *Allen* had mortgaged his lands in Northampton to Mr. *Galloway*, inſtead of ſelling them to ſettlers who remained citizens of America, the lands would have been forfeited and ſold as the property of Mr. *Allen*, and yet the legal title was not in him, the equity of redemption alone would have been his;—the ſtrictly legal title would have been in Mr. *Galloway*;—but *by the law of Pennſylvania* the lands and debts of each were confiſcated, and each was dead in the eye of that law as to all civil rights;—by the law of England "*they were both Britiſh ſubjects, bound by all their legal contracts, "and armed with all the legal rights which any other ſubject had*;"—but the lien on the particular property which had been ſpecifically pledged for the payment of ſuch a debt, was not ſecured by the *fourth* article of the Treaty of Peace, which related to creditors on one ſide and debtors on the other; the *deſcriptio perſonarum* therefore in the *fourth* article was dropt, and the more general expreſſion "*all perſons having any intereſt*, &c." was adopted, re[illegible]ring it immaterial, whether the creditor and debtor were on the ſame ſide or on different ſides.

Although

Although the *fourth* and the *fifth* articles of the Treaty of Peace, are thus totally diſtinct and unconnected, and relating to different objects, the former to *all creditors of all debts before contracted*, where the creditor and debtor were *on different ſides*, without any diſtinction or exception of real Britiſh ſubject or American Britiſh ſubject, confiſcation or ſequeſtration;—and the latter to confiſcated eſtates, rights and properties, (other than debts) and to liens upon ſuch property, without regard to the ſide on which the holder of of ſuch lien was; and although the two articles are expreſſed in language plain, conciſe and intelligible, yet the Courts in the United States have made a diſtinction in ſuits brought on the faith of the *fourth* article, between *real Britiſh ſubjects*, that is *merchants reſident in Great Britain*, and *American Britiſh ſubjects* or loyaliſts, and have confounded the ſtipulation in the *fourth* article with the recommendation in the *fifth* in all ſuits in which the latter have been plaintiffs. This conſtruction was well known to the negociators of the Treaty of Amity, and the *ſixth* article clearly embraces the caſe of theſe ſubjects by the expreſſions "divers Britiſh merchants and *others his Majeſty's ſubjects*;" this article however, contains no ſtipulation for a further removal of lawful impediments, but it contains an expreſs ſtipulation to compenſate all the loſſes created by the impediments which had exiſted.

With theſe preliminary obſervations, the General Agent for Claimants will proceed to examine the different decided caſes, affecting the debts due to Britiſh ſubjects, attainted or proſcribed for adhering to the Britiſh ſide in America.

Maſſachuſetts.

THE firſt caſe which will be remarked upon is that of *Moore v. Patch*—This ſuit was brought for the ſole purpoſe of trying in the Supreme Court of the State, the right of *James Putnam*, Eſquire, to recover a debt contracted before the revolution and due by a citizen of Maſſachuſetts:—the debt was admitted to have been *bona fide* contracted before the Peace, and that it remained unpaid, and the following ſtate of facts was ſubmitted to the Court.—"And the parties further "agree, that the ſaid *James Putnam*, after the 19th day of April, 1775, joined "the fleets and armies of the King of Great Britain, removing all political "and civil relation to this Commonwealth, then State, and thereby became "an alien, of which the ſaid *James*, at a libel duly proſecuted according to "law at a Court of Common Pleas held at ſaid Worceſter, on the ſecond Tueſ-"day of December, in the year of our Lord, 1780, was convicted, and that "the ſaid *James* was included, named and proſcribed in the act of this Com-"monwealth, commonly called an act for confiſcating the eſtate of abſentees; "and that the ſaid *James Putnam* at the time of extending the ſaid executions, "and executing the ſaid deed to the plaintiff, *and at all times after the ſaid* 19*th* "*day*

" *day of April until his deceaſe, was* an alien, being a ſubject of the ſaid King " of Great Britain, holding and executing a commiſſion under him, and owing " allegiance to the ſaid King and his government."

The above is dated Sept. 1791. The ſtate of the caſe, and the documents referred to in and accompanying it, preſented the following points to the view of the Court:

1ſt. That the debt was contracted before the peace, and remained unſatisfied.

2d. That the creditor was a Britiſh ſubject, and had never been a citizen of Maſſachuſetts after the Declaration of Independence.

3d. That the debtor was a citizen of the State.

4th. That the eſtate, real and perſonal, of the creditor had been confiſcated, and himſelf proſcribed.

Although from the looſe mode of practice in the State, the Treaty of Peace is not brought into view on the record, yet it was, in fact, the ſole ground on which the arguments for the plaintiff proceeded; it was impoſſible that it could be kept out of view, and as it was not only a public law, but a ſupreme law of the land, the Court were bound to take notice of it.

Judgment was rendered for the Defendant.

Murray v. Marean. May, 1791.

THIS was an action of debt brought in the Circuit Court of the United States, in the Diſtrict of Maſſachuſetts, by *John Murray*, Eſquire, of Saint Johns, in the Province of New-Brunſwick, againſt *William Marean*, of Worceſter, in Maſſachuſetts, on a bond dated the 5th of March, 1773.

On the record it appears,

That the plaintiff was a Britiſh ſubject, the defendant a citizen or inhabitant of Maſſachuſetts, and the debt contracted before the peace.

The defendant admitting the debt, relied wholly on the plea of the act of confiscation, " *and that thereby* the government and people of Maſſachuſetts were declared to be in the real and actual poſſeſſion of all the goods and chattels, rights and credits, &c. of the ſaid *John Murray*, without further enquiry, adjudication, or determination."

To this plea there was a demurrer and joinder according to the ſimple forms of practice in the State courts, and by that plea, demurrer and joinder, the law of the State, the Treaty of Peace, and the operation of both, were as fully before the court as they could be by any of the prolix and expenſive pleadings common in other States.

The judgment of the Court is on the validity of the plea, and not upon any irregularity or departure in the pleadings. " It is conſidered by the Court " that the plea in bar is good, and that the ſaid *John Murray* recover nothing " by his writ," &c.

Theſe debts being ſeverally under two thouſand dollars, no appeal or writ of error could be proſecuted.

By theſe deciſions the point was ſettled, that none of the perſons named in the ſaid law could recover any of the debts due to them from citizens of Maſſachuſetts, and contracted before the proſcription and confiſcation; and yet both theſe plaintiffs were officers of the Crown before the revolution; both left Maſſachuſetts before the Declaration of Independence; and neither of them had been even tacitly a citizen of Maſſachuſetts, or any other State, or had even been within the limits of the State, or had been guilty of traiterous conſpiracies againſt that State, any more than Sir *Henry Clinton*, Lord *Dunmore*, and Governor *Tryon*, had againſt the State of New-York; but the law had acted upon them as traitors, criminals, and conſpirators; the forfeiture of their *bona fide* debts had been legiſlatively inflicted as a puniſhment for a ſuppoſed crime, and the Courts held themſelves obliged to conſider them as criminals, and the forfeiture as complete.

Theſe are the only two decided caſes in Maſſachuſetts, in which the effect and operation of the conſpiracy act were brought before a Court in ſuits between Britiſh creditor and American debtor; but there is another document before the Board in the Claim of *Jonathan Simpſon*, in which the above two caſes are referred to, and which is entitled to all the weight of a judicial deciſion:—It is an official report of the Attorney General of the State to the Houſe of Repreſentatives, on a queſtion relating to the confiſcation of a debt due to *Jonathan Simpſon*. Speaking of the act of April, 1779, he ſays, " By this act the eſtates " of the perſons named in it were confiſcated without any further trial or adju- " dication, as has been ſettled by the judgment of the Supreme Judicial Court " of this State, as well as by that of the Circuit Court of the United States."

And in another part of his report he ſays,—" Upon the queſtion which I am " directed to anſwer, whether the note given by *Harriſon Gray*, Treaſurer to " *Simpſon*, is the property of the Commonwealth, *I can only ſay, that all debts due*

" *from*

" *from individuals or bodies of men to thoſe perſons who are named in the act for* " *confiſcating the eſtates of perſons called conſpirators, were, on the paſſing that act,* " *veſted in the government and people of the State, who are ſucceeded by the Com-* " *monwealth, without any further trial or adjudication*;"—dated Boſton January 22d, 1795.

New York.

ALTHOUGH the General Agent for Claimants has not been able to find that any judgment has been rendered againſt any of the perſons named in the act of attainder of New York, yet he is informed, that the univerſal opinion that ſuch ſuits could not be ſuſtained, was the reaſon why thoſe which had been inſtituted were diſcontinued; but the liquidation made the 13th of June 1788, by *John Sloſs Hobart*, Eſquire, one of the Judges of the Supreme Court of the State, of the debt due by *N. Barlow* to Biſhop *Inglis*, ſubſequent to the law of February 22d, 1788, repealing all acts repugnant to the Treaty of Peace, and ſubſequent alſo to the act of the 21ſt of March 1788, relating to forfeited eſtates, is tantamount to a judicial deciſion, that no part of the act of attainder was deemed to be repealed by the law of February, and that the collection of every debt due to every perſon included in the act of attainder, was enjoined by the law of March 1788; indeed the words of this latter law are too plain to require the aid of judicial deciſion to explain and fix their meaning:—The act of attainder of New York *ipſo facto* attainted and convicted the perſons therein named, as the " *moſt notorious offenders*," and clearly proceeded againſt them as criminals againſt the State:—Such is the declaration in the law, and the Legiſlature were conſtitutionally prohibited from paſſing acts of attainder for crimes, " other than thoſe committed before the termination of the then war."

North Carolina.

IN the State of North Carolina perſons of a certain deſcription were called upon by law, either to take an oath of allegiance and abjuration or depart the State, leaving it optional with thoſe perſons to adhere to their native original allegiance, or to become citizens of the new government:—Their debts which remained

mained uncollected were afterwards confiscated, as well as their real estates which had not been disposed of for a valuable consideration actually paid before their departure; but there was no attainder of their persons for adhering to the British government, no Legislative conviction of crime on that account:—Their departure had been acquiesced in by the state. Yet it was not until 1796, that any judgment or recovery by any of these British creditors could be had and obtained in North Carolina, and in the opinion delivered by Chief Justice *Elsworth*, there is to be found the most decided proof, that if they had been attainted and convicted for that adherence, instead of being permitted so to adhere, they could not recover their debts. "It is true (says the Chief Justice) that on the *fourth* of "July 1776, when North Carolina became an independent State, they were in-"habitants thereof though natives of Great Britain, and they might have been "claimed and holden as citizens, whatever were their sentiments and inclinati-"ons. *But the State afterwards, in* 1777, *liberally gave to them, with others si-"milarly circumstanced, the option of taking an oath of allegiance, or of departing,* "*&c.* They chose the latter, and ever after adhered to the king of Great Bri-"tain, and must therefore be regarded as on the British side.

Again, the Chief Justice in speaking of the States in which British debts were sequestered or confiscated, observes,—"Civil war, which terminates in the seve-"rance of empire, does perhaps, less than any other, justify the confiscation of "debts, because of the special relation and confidence subsisting at the time "they were contracted, and it may have been owing to this consideration as well "as others, that the American States in the late revolution, so generally forbore "to confiscate the debts of British subjects.—In Virginia they were only seques-"tered. in South Carolina, all debts to whomsoever due were excepted from "confiscation, as were in Georgia those of *British merchants and others residing in* "*Great Britain*; and in the other States, except this, I do not *recollect that* "BRITISH DEBTS *were touched*"—*(Hamilton v. Eaton)*. As it is impossible to suppose the Chief Justice to have been unacquainted with the several laws of the States of Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, and Georgia, proscribing and attainting the persons, and confiscating the estates of and debts due to those who adhered to the British government, it is evident he does not consider the debts due to Doctor *Inglis* or to the present Claimant, as British debts, because the States of New York and Pennsylvania did not consent to their exercising a natural and inherent right. The above opinion was delivered a few months subsequent to the decision of the Supreme Court in the case of *Jones's* Executors *v. Hylton*.

Archibald & John Hamilton v. *William Moore*. } Circuit Court of the United States District of Georgia.

THIS was an action of debt on a bond dated 19th of April 1776, for £5090 2 Virginia currency, brought to April term 1793. The debt was contracted

tracted in North Carolina where both parties then reſided, but the defendant had lately removed to Georgia. The record ſtates the plaintiffs to be aliens and natural born ſubjects of His Britannic Majeſty, and the defendant to be of Wilkes county in the State of Georgia.

To this ſuit the defendant pleaded the acts of confiſcation in North Carolina, the payment of the debt into the treaſury of that ſtate, and the act of Georgia which confiſcated all the eſtates and debts in Georgia (except debts due to Britiſh merchants reſiding in Great Britain) due to ſuch perſons as were named in the confiſcation acts of other States, in the ſame manner as ſuch eſtates and debts were confiſcated in thoſe States.

To theſe pleas there was a demurrer and joinder, This cauſe came on before the Honourable *William Paterſon*, Eſquire, and the Honourable *Joſeph Clay*, Eſquire, Judge of the Diſtrict Court, on Tueſday the 15th November 1796, ſubſequent alſo to the deciſion of *Jones v. Hylton*, and the demurrer was overruled and judgment rendered for the defendant.

The following is the ſubſtance of the opinion of the Court as delivered by Judge *Paterſon*.

" That Meſſrs. *Hamiltons* were not to be eſteemed real Britiſh ſubjects, and that they were not entitled to claim as ſuch the benefits extended to real Britiſh ſubjects by the Treaty of Peace.—That being within the United States at the time of the Declaration of Independence, and remaining therein after that period, it muſt be preſumed that they made their election, and that by continuing in North Carolina for ſometime (it mattered not how long or how ſhort that was) they virtually became ſubject thereto; that the confiſcation laws, which afterwards in conſequence of their ſtill refuſing to take the oaths to the State, and of the other ſteps taken by them, muſt be allowed effectually to bar their recovery of any of their former property deſignated by thoſe acts, and that this muſt be the caſe with their debts, even in caſes where their debtors had not paid into the treaſury.—That had Meſſrs. *Hamilton* been what he conſidered as *real Britiſh* ſubjects they muſt have recovered, notwithſtanding any confiſcation laws or other impediments of what kind ſoever, becauſe the Treaty of Peace muſt be kept inviolably ſacred, but as he could not conſider them as ſuch, he muſt decree that the plea of the defendant in bar was ſuſtained."

Upon this judgment being rendered the plaintiff determined to take out his writ of error;—but as errors were to be aſſigned, and thirty days previous notice to be given to the oppoſite party, it was not poſſible to have this done in time to be at the ſeat of government by the enſuing Supreme Court, and by ſome ſtrange inadvertence, the writ was filled up with a term intervening between the teſte and return days, and was of courſe *nonpros'd*; (3 *Dallas.*) And as the whole large eſtate of the defendant had been made away with, or covered with other judgments, the expence of a new writ was thought unneceſſary.

While it is believed, that the learned Judge on more full conſideration of the act of North Carolina, (which probably had not been fully explained by the counſel

counſel in Georgia) would have inclined to the opinion, that the plaintiffs with the aſſent of the government of North Carolina, had made their election to continue Britiſh ſubjects inſtead of becoming citizens, yet the opinion delivered by him in this caſe fully juſtifies the aſſertion, that all the ſtrong and general expreſſions made uſe of a few months before by the ſame Judge, in the caſe of *Jones v. Hylton*, were meant to be applied to ſuch creditors as *Farrel* and *Jones*, merchants of Briſtol, who had always reſided in England, and not to American Britiſh ſubjects, whoſe debts had been forfeited, and themſelves proſcribed for refuſing to abjure their original allegiance, and to become citizens of the United States.

Georgia.

THE State of Georgia paſſed its laws,—*Firſt* " An Act for attainting ſuch " perſons as are therein mentioned, of high treaſon, and for confiſcating their " eſtates real and perſonal," &c. And *ſecondly*, " An Act for inflicting penalties " on, and confiſcating the eſtates of ſuch perſons as are therein declared guilty " of high treaſon, and for other purpoſes therein mentioned."

From the face of theſe acts, and from the poſition Georgia aſſumed when the oppoſition to the acts of the Britiſh Parliament took place in the other colonies, ſome material points are apparent.

The firſt of the acts above alluded to, contains in its preamble, a declaration that the King of Great Britain on the 19th of April 1775, did commence a cruel and unjuſt war againſt the good people of America, and that thereby he did *forfeit* and *forefault* every right and title to the allegiance of the ſaid people, and that the powers of government, incapable of annihilation, did devolve upon the people for the exerciſe " of the ſame, and the ſaid people did, as of " right and juſtice they ought, enter into a full exerciſe thereof for their com- " mon ſafety;"—and aſſuming the ſaid 19th of April 1775, as the time at which all allegiance was transferred from the king, and reverted to and devolved upon the powers which aſſumed the right and exerciſe; the act proceeds " and *where-* " *as, various perſons* INHABITANTS *of this State, in contempt of the ſaid allegi-* " *ance* and duty ſo transferred as aforeſaid, did traiterouſly avoid the ſame, &c. " and whereas, it is but reaſonable and juſt, that the eſtates both real and perſonal " of all ſuch perſons reſiding within this State, on or ſince the ſaid 19th day of " April, *who have refuſed their allegiance to the governing powers* ſhould be for- " feited and confiſcated," &c. And the act then proceeds to attaint Sir *James Wright* His Britannic Majeſty's Governor of the province of Georgia, *James Hume*,

Hume, Eſquire, the Attorney General of the ſaid King, and afterwards Chief Juſtice of his province of Eaſt Florida, and a number of others who had left Georgia long before the Declaration of Independence, who never had been even inhabitants, much leſs citizens of the State, and who on the ſaid 19th day of April 1775, were in the actual, peaceable and legitimate exerciſe of the powers of government in the then province of Georgia.

The fact is, that the province of Georgia had not united with the other colonies in April 1775, but had refuſed ſo to do—Georgia had not been repreſented in the firſt Congreſs, or in the firſt ſeſſion of the ſecond Congreſs; it was not until the 15th July 1775, that any delegates were appointed from that then province, and then were appointed, "to do, tranſact, join, and concur with the ſeveral delegates from the other colonies and provinces upon this continent, in all ſuch "matters and things as ſhall appear eligible and fit at this alarming time, for "the preſervation and defence of our rights and liberties, and for the reſtoration "of harmony upon the conſtitutional principles between Great Britain and "America."—(*Firſt Journals of Congreſs*, 97, 172, 195.)

The firſt ſection of the act of 1782, attaints by name the individuals mentioned in the firſt act, and ſeveral others, "for traiterouſly adhering to the King of "Great Britain," &c. but none of the perſons ſo named are called citizens of Georgia; one is particularly called of *South Carolina*; *Baſil Cowper*, and *William Telfair* two of the perſons named, were merchants reſiding in London; and the heirs, deviſees and aſſigns of others, are attainted without any name.—When the Legiſlature choſe to refer to citizens of the State, they uſed the proper expreſſion, as in the third ſection of the act of 1782.

The ſtrong ſimilarity between the laws of Georgia and the act of attainder of New York, juſtify the application of deciſions under one to the caſes of perſons included in the other, had they brought ſuits.

This leads to the caſe of *Douglaſs v. Stirke*, in the Circuit Court of the United States for the North Carolina diſtrict, May term, 1792.

From a certified copy of the record in this caſe it appears, that *Samuel Douglaſs* of the iſland of Jamaica is plaintiff, *James Greenhow* of Effingham in the State of Georgia, planter, and *Hannah* his wife, Executors of *John Stirke*, defendants, and the debt to have been contracted before the war.

The debt is admitted, and the defendant relies for his plea upon the acts of attainder and confiſcation of Georgia:—The plaintiff replies with the Treaty of Peace, and the conſtitution of the United States making the ſame the ſupreme law of the land:—On demurrer the following judgment is given:—

"All and ſingular the premiſes being ſeen, and by the Court now here more "fully underſtood, and mature deliberation being thereon had, it ſeems to the "ſaid Court, that the plea aforeſaid by the ſaid, &c. in manner and form "pleaded, and the matter in the ſame contained, are good and ſufficient in law "to preclude the ſame *Samuel Douglaſs* from his action aforeſaid, &c."

Thus,

Thus, we have the authority of the late Chief Juſtice of the United States, the preſent Chief Juſtice, Judge *Cuſhing*, Judge *Paterſon*, and Judge *Iredell*, beſides the diſtrict Judges *Lowell*, *Pendleton*, and *Clay*, the Judges of the Supreme Court of Maſſachuſetts, the official letter of the Attorney General of Maſſachuſetts, and the liquidations of the Judges of the Supreme Court of New York, in ſupport of the aſſertion, that "in the ordinary courſe of judicial proceedings, Britiſh ſubjects who were attainted by American Legiſlatures, cannot recover their juſt debts; and that diſtinctions in the American Courts are made between American Britiſh ſubjects and real Britiſh ſubjects; and it is evident, that no ſuch diſtinction is to be found in the *fourth* article of the Treaty of Peace.

Pennſylvania.

A FEW remarks will now be made upon attainders in Pennſylvania:—Theſe are of three kinds,

Firſt, by being particularly named in the act of attainder.

Secondly, By being called upon by proclamation of the Supreme Executive Council, to ſurrender and abide a trial, and neglecting to comply.

Thirdly, By conviction on indictment, or proceſs to outlawry.

The firſt of theſe could not be controuled by the Courts, and could only be reverſed by an act equal to that which inflicted the penalty. The power of the Legiſlature could not be queſtioned, and if they had attainted a wandering Tartar for eating horſe fleſh, a Turkiſh Mufti for refuſing Madeira, or an Indian Sachem for drinking too much rum, and either of them had afterwards been found within the State, the Courts would be obliged to conſider them as traitors.

As to the ſecond claſs, the power delegated by law to the council being ſpecial, if a perſon attainted by proclamation in due form had been found in the State before the Peace, his innocence or guilt would have been immaterial; two queſtions and only two could have been brought before a Court: Firſt, as to the identity of perſon; ſecond, whether he had became a citizen of the State, before the alledged act of treaſon; becauſe the power of the council was confined to iſſue proclamations calling upon inhabitants *or citizens* of the State.

The third claſs being for crimes found by a jury to have been committed within the body of a county, need not be remarked on here; judgments on improper convictions might have been arreſted, or informal outlawries reverſed.

A

A decision of the higheſt authority in Pennſylvania on an attainder of the ſecond deſcription will eſtabliſh clearly theſe points.

Firſt. That Mr. Allen was a Britiſh ſubject.

Second. That he never was a citizen of the State of Pennſylvania, and committed no treaſon againſt it.

Third. That notwithſtanding this, he is conſidered as lawfully attainted, and of courſe incapable of maintaining any civil ſuits for any debts contracted in Pennſylvania prior to that attainder.

It is here admitted, that after the Treaty of Peace, no criminal proſecution would have been permitted againſt Mr. *Allen* on account of the ſaid attainder, but it is inſiſted, that the confiſcation of the debts due to him before would not have been conſidered as annulled becauſe accompanied by attainder; as for the pardon which ſome of his friends applied for without his knowledge, and before his arrival in the country, it was a mere piece of waſte paper, as to any operation it could have in enabling him to recover the debts which had been paid into the treaſury. It is not to be ſuppoſed that Mr. *Allen* would have impolitely thrown away or refuſed accepting the paper, which the affection of his old friends had induced them to ſolicit, nor does the General Agent know, whether Mr. *Allen* ever did really ſee the pardon, or a copy; this he well knows, that there is no power in the Governor to draw out the money paid into the treaſury by the debtors of Mr. *Allen*, or to enable Mr. *Allen* to recover it from the debtors themſelves. Nor could that pardon, or any other act of the Governor, naturalize or make a citizen of a Britiſh ſubject.

The deciſion alluded to above is in the caſe of the Commonwealth of *Pennſylvania v. Chapman.* 1 *Dallas*, 53.

As this caſe is reported at large, the General Agent will content himſelf with barely ſtating the points which appear clearly to be admitted or decided.—They are theſe.

Firſt. That in civil wars every man chuſes his party, and that Pennſylvania was not a nation at war with another nation, but in a ſtate of civil war.

Second. That on the diſſolution of the old government, although the voice of the majority muſt be concluſive as to the adoption of the new ſyſtem, yet that the minority have individually, an unreſtrainable right to remove with their property into another country, and that a reaſonable time ſhould be allowed for that purpoſe, and that none are ſubjects of the adopted government but thoſe who had freely aſſented to it.

Third. That the Legiſlature allowed a choice of his party to every man until the 11th of February 1777, and that no act favouring of treaſon, done before that period, ſhould incur the penalties of the law of that date, which had no retroſpect.

Fourth. That there was a ſuſpenſion of all laws from 14th May 1776, until 11th of February 1777, and if there were no laws to be obeyed, no one could be deemed a ſubject of the State.

Fifth. That nevertheleſs, although *ex poſt facto* laws generally ſpeaking are unjuſt and improper, yet the Legiſlature, if they were impreſſed with the neceſſity of the caſe, had incontrovertibly a right, to declare any perſon a *traitor* who had gone over to the enemy, and ſtill adhered to them.

The reſult was, that *Samuel Chapman* the defendant, who was born in Bucks county Pennſylvania, and who continued to reſide there until December 1776, long after the Declaration of Independence, was nevertheleſs a Britiſh ſubject, and not a ſubject of the State, and therefore not a perſon whom the Council were authorized to attaint, and he was accordingly acquitted.

The inference from the laſt point is, that Mr. *Allen*, who was equally a Britiſh ſubject, who had equally a right to make, and did actually make his election, and who had committed no treaſon againſt a State in which there were no laws to obey, was nevertheleſs legally made a traitor by the omnipotence of a Legiſlative act. It is evident from what has been ſtated, that Mr. *Allen* is, and from his birth has been a Britiſh ſubject, as well as Biſhop *Inglis*, and of courſe entitled to compenſation for debts loſt by the operation of lawful impediments contrary to the Treaty.

After the unanimous deciſion of the Board, that the Biſhop of Nova Scotia is to be conſidered as a ſubject of His Britannic Majeſty within the meaning of the Treaties, and the reſolution moved by one with the approbation of two other Commiſſioners (being a majority of the Board) that proceedings at law now, in ſuch caſes, are not requiſite, and that the laws and deciſions on them already laid before the Board were ſuch as to ſatisfy the conſciences of that majority, that ſuch proceedings would be as hopeleſs as unneceſſary, the General Agent for Claimants would not have preſumed to offer any remarks on that part of the anſwer in this caſe, which ſtates that the Claimant can have redreſs on the equity ſide of the Federal Courts. The order, however of the 12th of March, to reply to certain points therein ſuggeſted, *in addition to thoſe made in the anſwer*, muſt be his apology, as well for the repetition of former obſervations, as for the addition of the others contained in the preceeding pages.

The points ſuggeſted in that order will now be obſerved upon, and if that order had never been made, the points therein ſuggeſted would have been the only ones conſidered in the reply of the General Agent for Claimants; *And* a clear ſtatement of the ſituation and rights of the contracting parties at the time the Claimant was attainted, while it will obviate the points ſuggeſted in the order, will at the ſame time prove, that the monies due to him are not an equitable charge on the lands.

Mr. *Allen* ſold to the ſeveral perſons mentioned in his memorial, certain tracts of land in the county of Northampton, and in order to ſecure the payment of the purchaſe money, notwithſtanding the purchaſers took poſſeſſion of the lands, he

he retained his original fee ſimple, of which he was not to be diveſted, unleſs he received a part of the money, and had the land re-conveyed to him by way of mortgage, for the reſidue:—Mr. *Allen* never had an equitable charge on the lands, nor did he or the purchaſers ever entertain an idea, that in any poſſible contingency, he ſhould acquire ſuch an equitable charge.—In the firſt inſtance and before conveyance, the bond or articles of agreement manifeſted the terms of the purchaſe, a compliance with which by the purchaſer was effectually ſecured by the ſeller's retaining the fee.—In the ſecond inſtance, and after a conveyance made by the ſeller, the mortgage executed by the buyer would have replaced the fee ſimple in the ſeller, with him to remain, until he received his purchaſe money: ſo that in each caſe, the right of the ſeller was a ſtrictly legal one, kept up for the expreſs purpoſe of compelling payment of a debt.

As Mr. *Allen* never conveyed the ſtrict legal title, it may not be amiſs to ſhew what, agreeably to the laws and cuſtoms of Pennſylvania, were the rights of the purchaſers.—By their contracts and poſſeſſion they obtained equitable titles to their lands, under which they could either recover or defend in ejectment:—By complying with their contracts they had a right to a conveyance of the legal fee from the ſeller, nor could they be lawfully turned out of poſſeſſion by the ſeller, by ejectment or otherwiſe, even after a breach of contract by not being punctual in the firſt, or any other inſtalment, if at any time before trial they were ready to comply with their contract; and although the lands from any circumſtances might have increaſed fifty fold in value, legal intereſt from the time the payment ought to have been made would be all the additional ſum the ſeller could recover:—The rights of the ſeller to recover the price of the land agreeably to the contract and the bonds, from the perſons of the purchaſers, was ſtrictly legal; his right in the land was purely legal; he had no merely equitable right, either to the money or in the land; the title of the buyer was equitable:—It therefore concluſively follows, that the Agent of the United States has miſapplied his equity, by contending that Mr. *Allen* had an equitable charge upon the lands, as all equitable title was on the part of the buyer, and the mere legal title remained in the ſeller, ſubject to the equity of the buyer; an equity which followed the lands, an equity which the Commonwealth held ſacred, and which the buyers could enforce againſt the Commonwealth in the ſame manner, that they could have enforced it againſt Mr. *Allen*; hence therefore, although the Commonwealth ſold the confiſcated real eſtate of Mr. *Allen* in other counties at public ſale to the higheſt bidder, they only received the debts due from the Northampton purchaſers, (his debts as well as lands having been confiſcated) and on ſuch receipts, a legal title was given in addition to the equitable title they before had.

If Mr. *Allen* had mortgaged theſe lands inſtead of ſelling them, the legal title would have been in the mortgagee, but yet the lands would have been confiſcated and ſold ſubject to the mortgage; the legal title being only a collateral ſecurity for a debt. If the purchaſers under the article, had been attainted inſtead of Mr. *Allen*, the lands would have been forfeited, and the legal title retained by Mr. *Allen* would have been conſidered only as a ſecurity for a debt.

Had Mr. Allen conveyed theſe lands to a third perſon after the execution of the above article, the grantee would be conſidered in Pennſylvania, only as the aſſignee of a debt, and could recover nothing but the debt. It

1. Mr. *Allen* inſtead of retaining his original title, had actually conveyed to the purchaſers, and then taken a mortgage, he would have been in *ſtatu quo*,—he would have had the bonds of the purchaſers for the debts, he would have had the legal title of the land as his ſecurity; the State would have collected the debts, and they would then have done what is tantamount to the deeds they have given; they would have directed ſatisfaction to have been entered on the record of the mortgage, which is equivalent in Pennſylvania to a reconveyance of the fee. As the caſe now ſtands, Mr. *Allen* has the contracts and bonds of his debtors, and retains the evidence of his legal title as his ſecurity; and it appears impoſſible in the eye of reaſon, equity, and juſtice, to diſcriminate between his rights in one caſe and the other.

So alſo, in another point of view, the purchaſers were like all other fee ſimple owners of lands in the State. Had a Commiſſioner of confiſcated eſtates attempted to turn any of them out of poſſeſſion, they would have been entitled to their remedy and damages at law, as perfectly as they would have been entitled againſt Mr. *Allen*, if he had at any time forcibly diſpoſſeſſed one who had been delinquent in payment, inſtead of taking his remedy by ſuit.—If one of theſe purchaſers had died inteſtate before the payment of the debt into the treaſury, leaving a widow, two ſons, and perſonal property ſufficient to pay his debts, the widow would be entitled to her dower, the eldeſt ſon would have been entitled to two ſhares, the younger to one ſhare of the land, partition or valuation of it might have been had, as of other fee ſimple eſtates, and on application to the Court and payment of the debt of the anceſtor, due to Mr. *Allen*, into the treaſury of the State, a conveyance or conveyances of the legal title would have been executed, either to one ſon, if the eſtate had been valued as incapable of diviſion without injury, or to both, according to the inteſtate law, and agreeably to their ſeveral intereſts, if the eſtate had been capable of diviſion But would the ſons thus veſted with the title conveyed by the deed of the State, be conſidered as purchaſers or as heirs? ſtrictly and legally ſpeaking they are purchaſers;—but in Pennſylvania, lands inherited by and in the poſſeſſion of heirs, or purchaſers under them, are aſſets for the payment of the debts of the anceſtor from whom thoſe lands deſcended; and if any debts due by the deceaſed purchaſer under the articles from Mr. *Allen*, had been brought forward, even after the deeds from the State to the heirs, and no perſonal aſſets were left, theſe lands would be liable in the hands of the heirs for the debts of the anceſtor, notwithſtanding the lands were veſted in the ſons by the deed of the State; and yet thoſe lands never would have been liable in the poſſeſſion of the anceſtor, the heirs, or purchaſers under either, *for any debt due from Andrew Allen unleſs a judgment had been obtained* againſt him in the county of Northampton *previous to the articles*, or unleſs the lands had been levied upon by a *teſtatum* from ſome other county. True, it is, that the debts due from the purchaſers to Mr. *Allen*, might have been the ſubject of attachment in the hands of the debtors, if Mr. *Allen* had owed any debts and had at any time been a debtor within the meaning of the attachment laws.

If on the other hand, ſuch deceaſed purchaſer under the articles had left no perſonal eſtate to pay his debts, and his heir had paid the balance due to Mr. *Allen*, and had obtained a conveyance from the Commonwealth, that land would

ſtill

ſtill be liable for the other debts of the anceſtor, to the amount of the difference between the principal and intereſt due to Mr. *Allen* at the time of the anceſtor's death, and the value of the land.

From the mode of acquiring original titles to lands in Pennſylvania, and from the circumſtance of there being no Court of Chancery in that ſtate, to compel the ſpecific performance of agreements, poſſeſſion and the equitable title has been conſidered as every thing, and not unfrequently, under an equitable title only, poſſeſſion has been recovered in ejectment againſt the legal title.

Previous to the revolution, and until the land office was opened ſince the Peace, (except for city and town lots, and farms in the old ſettled counties of Philadelphia, Bucks, and Cheſter) nine tenths of the lands in Pennſylvania were held, enjoyed, and improved under equitable titles;—a warrant to ſurvey a particular tract, and a ſurvey identifying and deſcribing the lands intended to be granted, was all the title the ſettlers had.

On ſome of theſe warrants only the bare office fees had been paid, and all the purchaſe money remained due; on others the purchaſe money had been paid at the time of taking out the warrant, and nothing remained due, unleſs there were ſome overplus acres in the ſurvey, beyond what the warrant called for; and in ſome inſtances, where a ſufficient quantity of unappropriated land to ſatisfy the warrant did not remain in the place deſcribed, the purchaſe money had been overpaid; and yet the legal title remained in the proprietary in all theſe caſes; but the title of the owner was not rendered leſs equitable becauſe no part or but a part of the purchaſe money was paid, nor was it rendered more legal where it was overpaid; and in no inſtance could the legal title be demanded without a certificate from the Receiver General that the arrears were paid.

If the Commonwealth had attainted the proprietaries, would it be pretended that theſe lands were confiſcated becauſe the legal title remained in the proprietaries, certainly not.—And after ſuch attainder and before any payment of arrears, any equitable holder might bring his action, and recover his damages, for an injury to the freehold, and no plea, no evidence that the title was not in the plaintiff could have been ſuſtained or admitted in any Court in the State; *the* attainder and confiſcation would have effected nothing but what the proprietaries had a right to receive, to wit, the arrears of debt due for the land.

Had an act of Aſſembly of Pennſylvania been paſſed conformably to the recommendation mentioned in the *fifth* article of the Treaty of Peace, Mr. *Allen* would have been reſtored to the poſſeſſion of his lands in the county of Berks which were *confiſcated and ſold*, and would not be required to pay any thing for them; and that, whether he was conſidered *as a real Britiſh ſubject*, or as a perſon reſident in diſtricts in poſſeſſion of His Majeſty's arms, not having borne arms againſt the United States;—*perſons of other deſcription* than theſe, (more obnoxious than the former and not included in the firſt recommendation) are the *laſt mentioned* Perſons, who were to have been the ſubjects of the latter recommendation, and who were to have paid on being reſtored:—But Mr. *Allen* would not have been entitled to reſtitution of the lands in Northampton, which he had

had ſold, and the poſſeſſion of which he had delivered to the purchaſers; because he had no claim upon them for any thing but a debt the recovery of which was ſecured by the *fourth* article; and the immenſely valuable improvements on the lands, and their increaſed value, were the effects of the induſtry, labour, and expenſe of the owners, and on theſe he could have no claim further than for his intereſt accrued; and he was able at the peace to perform his part of the contract, which was nothing more than for the delivery of the parchment evidence of the legal title, and a conveyance of his right to the ſame.—He never covenanted againſt the irreſiſtible force of an act of attainder, the narrow conſtruction of a Treaty of Peace, or that the lands ſhould not be ſwallowed up by an earthquake.

The General Agent reſpectfully truſts, that in other arguments it has been ſhewn, that all lawful impediments to the recovery of all *bona fide* debts before contracted, on either ſide, were intended to be removed by the Treaty of Peace, and of courſe that if any conſequence whatever of an act of attainder or confiſcation would have barred a recovery, ſuch act, *quoad hoc*, was nullified.

It is inſiſted that no admiſſion, limitation or condition in the *fifth* article, ſanctions any effect of the confiſcation of eſtates, rights and properties therein mentioned, when that effect would impede the recovery of a *bona fide* debt, and that the contrary concluſion is manifeſt from the ſtipulation in the cloſe of the article.

It has it is hoped been clearly ſhewn, that by the law of England, and by the law of Pennſylvania, Mr. *Allen* is a Britiſh ſubject, within the true intent and meaning of both treaties.

It is indiſputable, that he is the creditor of debts *bona fide* contracted before the peace, which have never been paid to him, or to any perſon authoriſed by him. ' ſo far as relates to him, they are ſtill juſtly due and owing.

no diſcrimination bet en one *bona fide* debt and another; or be- wful impediment an nother; A law preventing a creditor from n act, merely and ſtrictly legal, and not ſubſtantially material, ting at the ſame time a recovery of the debts, becauſe that act is not med, is as much a lawful impediment as a law prohibiting the commence- and proſecution of ſuits; and the objection ſtarted in this particular caſe is neither more or leſs than this, "that a creditor ſhall not recover debts due on "bonds, becauſe he had retained a legal title to lands as a ſecurity for the pay- "ments;" or in other words, that while the confiſcation of all debts was annulled, and their recovery ſecured by one article, the confiſcation of the ſecurity is admitted and ſanctioned by another article of the ſame Treaty:—But if the recovery has thus been hitherto prevented becauſe the ſecurity has been thus impaired, does it not follow, that compenſation is now the right of the creditor under a later Treaty, and that the proſecution of hopeleſs ſuits is not his duty.

Itis n ot pretended, that any other cauſe would have equally operated to have produced the loſs ſuſtained by the Claimant, if the ſaid impediments had

had not exiſted; and it is apparent, that impediments created by law and not by the parties, hitherto have prevented, and yet do prevent, a recovery. The debtors, or their repreſentatives, are able to pay; and the tract of land of which the legal title was reſerved to ſecure the ſaid debts, is one of the fineſt, beſt improved, and moſt valuable in the country. Equity and juſtice, therefore, and a true conſtruction of the Treaties, entitle the Claimant to compenſation; he is a Britiſh ſubject; he never was a citizen of Pennſylvania; he adhered to his native allegiance; he had an unreſtrainable right ſo to do; he committed no treaſon againſt the State of Pennſylvania in ſo doing; and he has, nevertheleſs, been puniſhed by the confiſcation of his debts, as if he had been a ſubject of the State, and guilty of treaſon againſt it.

W. MOORE SMITH.

To the COMMISSIONERS for carrying into Effect the Sixth Article of the Treaty of Amity, Commerce, and Navigation, concluded between His Britannic Majeſty and the United States of America, on the 19th November, 1794.

OBSERVATIONS

On the part of the United States,

On the REPLY of ANDREW ALLEN, *Eſquire.*

THE Agent for the United States in his Obſervations on the Reply in this caſe, will be the more conciſe, as many matters contained in the reply do not appear to him to require his notice.

Let it be recollected, that this claim has been oppoſed on two grounds.

Firſt. That the Claimant having been attainted of high treaſon by the legiſlative act of an independent State, and his eſtates and debts forfeited for that crime, the Treaty of Peace did not annul the forfeiture and reſtore to the Claimant a right to his forfeited debts.

Secondly.

Secondly. That if the Treaty of Peace did comprehend the Claimant, reſtoring to him a right to recover the debts that had been forfeited for treaſon, then thoſe debts being an equitable charge on the lands forfeited to the State, are within the proviſion of the laſt clauſe of the *fifth* article of that Treaty, and thoſe lands being always liable and now adequate to ſatisfy the ſame, ſhould be purſued in the ordinary courſe of juſtice, on the equity ſide of the Circuit Court of the United States.

Firſt ground of defence.

The Claimant has ſtated in his reply, that "it is not to be diſputed or denied in this caſe, that the Legiſlature of Pennſylvania proceeded againſt the Claimant as an *inhabitant or ſubject of Pennſylvania*, and confiſcated his whole eſtate real and perſonal, debts included;" and the legiſlative act expreſſes, that the attainder and forfeiture was inflicted for the crime of high treaſon.

In the caſe of Doctor *Inglis*, the Board on the 21ſt May 1798, reſolved, "that the Claimant's character of Britiſh ſubject was not affected or impaired by the act of attainder and confiſcation paſſed by the State of New York, on the 21ſt of October 1779, attainting him, the Earl of *Dunmore*, Governor *Tryon*, Sir *Henry Clinton*, and many other Britiſh ſubjects, who are therein deſcribed, *not as ſubjects of the State, but as perſons holding or claiming property within the State*, and forfeiting and confiſcating their whole eſtates real and perſonal, for their adherence to His Britannic Majeſty, but that on the contrary, the ſaid act of attainder, and the deſcription of loyaliſt or refugee, applied to the Claimant on the part of the United States, in conſequence of his ſaid adherence, are concluſive evidence that he ſtill maintained his original allegiance, that therefore he is entitled to claim before this Board under the *fourth* article of the Definitive Treaty of Peace, and the *ſixth* article of the Treaty of Amity, between his ſaid Majeſty and the United States." (Printed copy of the caſe of *Inglis* page 19). This reſolution has been exactly recited, becauſe it may be underſtood to have omitted the caſe of the Claimant, who in the act of attainder and forfeiture is expreſsly deſcribed as a ſubject of the State of Pennſylvania, and puniſhed as ſuch by a forfeiture of his eſtates and debts. Indeed the expreſſions in this reſolution ſeem to imply, that if Doctor *Inglis* had been attainted *as a ſubject of New York, and his debts confiſcated for a crime committed by him as a ſubject*, the Board would have diſmiſſed his claim. The diſtinction ſo explicitly taken by the Board, between attainting and puniſhing a man as a *ſubject*, and attainting and puniſhing him "*as a perſon holding or claiming property within the State*," muſt have been meant for ſome uſe. At all events, this reſolution cannot be conſidered as deciding that the *fourth* article of the Treaty of Peace ſet aſide legiſlative acts of attainder and forfeiture, paſſed againſt individuals deſcribed and holden as ſubjects of the State, and puniſhing them for their criminal conduct. There is certainly a difference between a confiſcation of an enemy's property by the right of war, and a forfeiture of a ſubject's property by law for criminal conduct.

That the State of Pennſylvania in paſſing the act of attainder and forfeiture againſt *Andrew Allen* the Claimant, deſcribed and conſidered him *as a ſubject*,

is apparent from the words of the act. If he had not been a ſubject of Pennſylvania, he could not have committed the crime of treaſon, of which he was by legiſlative act attainted. That legiſlative act is itſelf evidence, the beſt and higheſt evidence of his being a ſubject of the State. Such faith is due to the act of a Legiſlature of an independent State, that other teſtimony of the facts contained in it, is not to be required. On the act of attainder and forfeiture therefore, the Agent for the United States might reſt as ſufficient proof, that the Claimant was a ſubject of Pennſylvania. Aware of this, the General Agent for Claimants has advanced the extraordinary poſition, " that the Treaty " of Peace is the only point of time from which agreeably to the Britiſh con- " ſtitution and laws, the United States ceaſed to be a part of the Britiſh empire." According to this doctrine, Pennſylvania was not an independent State till the peace, for ſhe could not be an independent State while ſhe remained a part of the Britiſh empire. According to this doctrine her legiſlative acts prior to the Peace, are not to be regarded as the acts of an independent State.

This poſition being important to the juſt deciſion of this claim ſhall be examined.

When the United States became independent and took their place among the nations of the earth, is a matter not to be determined " agreeably to the " Britiſh conſtitution and laws," but agreeably to the laws of nature and of nations.

In fact they were independent ſo early as 1775, and on the ever glorious and memorable *fourth* of July, 1776, they ſolemnly and formally declared to the world they were independent, and from *that* period, have maintained their independence with honour and proſperity. Prior to the Treaty of Peace they made Treaties of Alliance, Commerce, and Navigation, and were thus publicly recognized by Foreign Powers as an independent nation. They carried on war, they made laws for their own government, and did every other act of a ſovereign power. The formal acknowledgment by His Britannic Majeſty added nothing to their *real independence*, and if the Treaty of Peace had never been made, the United States would have actually continued an independent nation, though at war with Great Britain to this moment.

What is it the United States were incompetent to do as a ſovereign power, between the *fourth* July 1776, and the third of September 1783, which they can now do?

" Every nation that governs itſelf under what form ſoever without any de- " pendence on a foreign power is a ſovereign State, its rights are naturally the " ſame as thoſe of any other State. Such are moral perſons who live together " in a natural ſociety, under the law of nations. To give a nation a right to " make an immediate figure in this grand ſociety, it is ſufficient if it be really " ſovereign and independent, that is, it muſt govern itſelf by its own autho- " rity." *Vattel B. i. Sec.* 4.

" When a nation becomes divided into two parties abſolutely independent, " and no longer acknowledging a common ſuperior, the State is diſſolved, and

" the war betwixt the two parties in every reſpect is the ſame with that of a " public war between two different nations." *Vattel, B. 3. Sec. 295.*

Applying theſe paſſages to the ſituation of the Britiſh empire when the American colonies ſeparated from Great Britain, declaring their independence, and maintaining it by the ſword, they prove the ſeveral United States to have been independent as early as the *fourth* of July 1776. That day is the anniverſary of their ſovereignty, and as ſuch celebrated in every part of the country. In the year 1776, the States generally formed their conſtitutions of government, ſome of which remain to this moment unaltered; and are conſidered as the palladium of their rights, the ſource of all lawful authority.

Even in Weſtminſter Hall the Judges have frequently declared, that the acts of the Legiſlatures of the ſeveral States, which were paſſed during the late war, could be regarded by them in no other light than acts of independent States.

The Agent for the United States therefore denies, that " the Treaty of Peace " is the only point of time from which agreeably to the Britiſh conſtitution and " laws the United States ceaſed to be a part of the Britiſh empire," and he denies alſo, that the commencement of their independence is to be aſcertained by the " Britiſh conſtitution and laws," but inſiſts that it is to be aſcertained by the laws of nature and of nations.

Suppoſing it eſtabliſhed to the ſatisfaction of the Board, that Pennſylvania became a ſovereign, independent State on the *fourth* of July 1776, and ſo continued ever ſince, the legiſlative act paſſed on the 6th March 1778, which deſcribed and held *Andrew Allen* by name as a ſubject, and for his treaſon attainted him and forfeited all his eſtates including his debts, being the act of the ſupreme power of a ſovereign State, is to be regarded at all times, while unrepealed, as incontrovertible evidence of the facts, that he was a ſubject to the State, and had been guilty of treaſon, for which his eſtates and debts were forfeited. Though it can be proved, that the Claimant having remained in Pennſylvania more than eighteen months after the beginning of hoſtilities, and more than ſix months after the declaration of independence, yielding obedience to the ruling powers of the State and enjoying its protection, thereby and by other acts made his election to be a ſubject to the State of Pennſylvania, yet this ſeems to be ſuperſeded by the legiſlative act of attainder and forfeiture. According to Engliſh juriſts an act of Parliament is eſteemed the higheſt evidence, and its verity ſo abſolute, that none can queſtion any thing contained in it. So too in the United States, is an act of the Legiſlature of a State eſteemed.

The conteſt in the preſent caſe is not between Great Britain and the United States concerning the effect of the act of attainder and forfeiture, but between *Andrew Allen* and the United States. Is it competent for him to deny or controvert any fact ſtated in the act of attainder? Is it competent for him to ſay, in contradiction to that Legiſlative act, that he was never a ſubject to Pennſylvania, and never had committed treaſon? If this legiſlative act has never been repealed, is the Board authoriſed by any principle or precedent to queſtion its

its verity, or to decide in the face of it, that *Andrew Allen* was not a ſubject of Pennſylvania? It may here be remarked, that an oath or ſolemn affirmation, was not indiſpenſable to make an inhabitant a ſubject to the State of Pennſylvania, though neceſſary to qualify for office: However juſt the doctrine may be, that the allegiance of Britiſh ſubjects is unalienable without the conſent of their Sovereign, when it only concerns queſtions between them and their King, yet a Britiſh ſubject having made himſelf a member of another State, may commit treaſon againſt that State and be puniſhed by it for his crime. For example, a Britiſh ſubject who has emigrated to the United States ſince the Peace, and has become a citizen thereof, may commit treaſon againſt the United States in the conſideration of their municipal laws.

Though *Andrew Allen* after being a ſubject to Pennſylvania joined the Britiſh forces in December, 1776, and returned to his natural allegiance; this did not diſſolve the right of Pennſylvania to hold him as its ſubject, and as its ſubject to puniſh him. Having done this by a legiſlative act, it only remains to be conſidered, whether that act was repealed as to debts by the *fourth* article of the Treaty of Peace. The Agent for the United States contends that it was not, and that the debts forfeited for treaſon during the war were not embraced by that article, becauſe *Andrew Allen*, and all others in the like predicament, were civily dead as to the United States, and were not creditors when the Treaty of Peace was concluded of the debts that had been forfeited. The Stipulation "that *creditors on either ſide* ſhall meet with no lawful impediment to the recovery of the full value in ſterling money of all *bona fide* debts heretofore contracted," does not include perſons who as ſubjects had been deprived of their eſtates and debts for their criminal conduct. *Andrew Allen* having joined the American ſide, as is proved by the higheſt evidence, the legiſlative act of Pennſylvania, and having deſerted it and thereby incurred a forfeiture of all his rights, is in no point of view to be conſidered as a creditor on the Britiſh ſide.

The Agent for the Claimant has introduced the caſe of the Commonwealth of Pennſylvania againſt *Chapman*, adjudged in the Supreme Court of Pennſylvania, as a deciſion among other points, that *Andrew Allen* was a Britiſh ſubject; being reported at large in *firſt Dallas*, *page* 53, a reference to it will be the beſt anſwer to what is ſaid about its purport. It is remarkable that *Chapman* was not *by legiſlative act* declared guilty of treaſon. *Andrew Allen* was ſo declared guilty of treaſon by the act of attainder. The two caſes therefore are eſſentially different. Attainders in Pennſylvania are ſaid by the Agent for the Claimant to be of three kinds: *Firſt*, by being particularly named in the act, and this was the caſe of *Andrew Allen*. *Second*, by being called upon by proclamation to ſurrender and abide a trial and neglecting to comply. This was the claſs in which *Chapman* was placed. While the courts affirmed the doctrine of the independence of Pennſylvania in 1776, and that treaſon might have been committed againſt the State at that period, they in *favore vitæ* took diſtinctions upon the acts of the Legiſlature which operated in favor of the priſoner, and *Chapman* was acquitted on the ground of *not being within the legiſlative acts*, and of his being rather a priſoner of war.

To conclude, the firſt ground of defence, if the legiſlative act of attainder and

and forfeiture paſſed by Pennſylvania on the 6th of March 1778, is to be conſidered as an act of a ſovereign independent State, it is concluſive proof that *Andrew Allen* was once a ſubject of Pennſylvania, and had forfeited his eſtate including his debts prior to the Treaty of Peace, for his criminal conduct as a ſubject. If as a ſubject he was attainted, and puniſhed by a loſs of his debts, the Treaty of Peace did not annul the legiſlative act of forfeiture, and reſtore to him a right to recover his forfeited debts. If the Treaty of Peace did not reſtore to him a right to recover ſuch forfeited debts, there has been no loſs proceeding from a violation of it, for which he is entitled to claim before the Board under the Treaty of Amity.

Second ground of defence.

But ſuppoſing the Treaty of Peace was meant to annul this, and every ſuch other act of attainder and forfeiture (which however is by no means admitted by the Agent for the United States) then the Claimant ought to recur to judicial proceedings for ſatisfaction out of the lands or from the debtors. Upon this ſubject very little will be added to what has been ſtated in the anſwer.

The Agent for the United States believes it has never been determined in the Supreme Court of the United States, whether a perſon held as a ſubject to a State in the early part of the war, and afterwards openly joining the forces of His Britannic Majeſty, and thereafter attainted by legiſlative act for treaſon, and his eſtates and debts confiſcated, is, or is not, of ability to proſecute and recover ſuch debts. For the reaſons that have been urged, it is probable it would be determined negatively in the principle that the *fourth* article of the Treaty of Peace did not embrace ſuch a caſe, and that ſuch an act of attainder and forfeiture was unrepealed by it.

Nevertheleſs, if it could be proved to their ſatisfaction that the Treaty did repeal ſuch a legiſlative act, no ſufficient reaſon occurs why they would not alſo determine, that a ſuit ſhould be judicially maintained for the recovery of ſuch debts.

On the part of the Claimant, great pains have been taken to ſhew, that he could not recover in the Courts of the United States, the debts which are the ſubject of the preſent claim. If the adjudged caſes which are mentioned had been repreſented with accuracy, the Agent for the United States would not trouble the Board with any obſervations on them. Moſt of them have been frequently ſubmitted to the Board, and the Agent for the United States finds with regret, that they are not repreſented with more correctneſs now, than they were at firſt, and though moſt of them have no relation to the points controverted in this claim, they will for the ſake of correctneſs be ſhortly noticed.

Moore v. Patch, in Maſſachuſetts.

The Agent for the Claimants has aſſerted, "that this ſuit was brought for "the ſole purpoſe of trying in the Supreme Court of the State, the right of "*James Putnam*, Eſquire, to recover a debt contracted before the revolution, and

" and due by a citizen of Maſſachuſetts," and after preſenting to view a part only of the caſe agreed by the parties, adds, " although from the looſe mode " of practice in the State, the *Treaty of Peace is not brought into view on the* " *record*, yet it was in fact the ſole ground on which the arguments for the " plaintiffs proceeded, &c."

In the argument in Doctor *Inglis's* claim this caſe is fully ſtated; (*Page* 41 *of the printed copy*) to which ſtatement the Agent prays leave to refer. By reference to it the Board will perceive, that the real queſtion tried and meant to be tried was, whether an *alien* could hold lands in Maſſachuſetts, and it was determined he could not. With this view of the caſe of *Moore* and *Patch* it is wholly inapplicable to the ſubject now under conſideration.

Murray vs. Marean, in Maſſachuſetts.

The record of this caſe is added to the printed caſe of Doctor *Inglis*. The pleadings did not bring the Treaty of Peace before the Court, ſo that the judgment was merely on the queſtion, whether a legiſlative act of confiſcation veſted in the State, the eſtates and debts of an individual or not. It was decided in the affirmative, and every body muſt agree it was rightly decided. This appears to be the true ſtate of the caſe (*Printed copy of Inglis's caſe, pages* 98, 99.) It conſequently has no relation to the caſe of a perſon attainted as a traitor whoſe debts were forfeited on that account.

Indeed obſerving on theſe two caſes the Agent for Claimants ſays, both theſe plaintiffs were " officers of the crown before the revolution, both left Maſſachu- " ſetts before the declaration of independence, and *neither of them had been even* " *tacitly a citizen of Maſſachuſetts or any other State* or had even been within the " limits of the State, or had been guilty of traiterous conſpiracies againſt that " State, any more than Sir *Henry Clinton*, Lord *Dunmore*, and Governor *Tryon*, " had again... the State of New York, &c." According to his own repreſentation then there is no ſimilarity between *either* of *theſe caſes* and that of *Andrew Allen*.

The opinions of the Attorney General of Maſſachuſetts, as cited in the Reply, are believed to be very correct, but they too have no relation to the Treaty of Peace.

What has been remarked by the Agent for the Claimant, reſpecting the liquidation *J. S. Hobart*, Eſquire, one of the Judges of New York, of the debt due by *N. Barlow* to Biſhop *Inglis* ſhall paſs without comment.

Hamilton vs. Eaton.

The plaintiffs in this caſe were allowed by a law of North Carolina, together with others ſimilarly circumſtanced, the option of taking an oath of allegiance to the State, or of departing it. They choſe the latter and were never regarded as ſubjects to the State. Their confiſcated debts they have been adjudged to be capable of recovering of the debtors.—It is not to be denied that the Chief Juſtice

Juſtice *Ellſworth*, in delivering his ſentiments on this caſe, does ſtrongly imply, if the plaintiffs had been claimed and holden as citizens, and for their crime had been deprived of their debts, that they could not have recovered them under the Treaty of Peace. This opinion the Agent for the United States conſiders, as a very reſpectable ſupport of the firſt ground of defence taken in this claim. Upon all occaſions the Chief Juſtice has been ready to allow the fulleſt force of the Treaty of Peace upon caſes within it, and if debts forfeited for treaſon are not in his opinion recoverable in the Federal Courts, it can only be becauſe he thinks they are not within the operation of the Treaty, for if they were, it is difficult to aſſign a reaſon why they ſhould not be recoverable at law, as well as debts confiſcated by right of war.

Hamilton vs. Moore, in Georgia.

The Agent for the United States having underſtood in the month of March laſt, that a caſe had been decided in the Circuit Court of Georgia, in which Judge *Paterſon* preſided, without knowing the name of the defendant, or the purport of the deciſion, wrote to him for information reſpecting it. He was favoured with two letters dated 16th of March and 27th May, which follow.

COPY.

New Brunſwick, 16th March, 1799.

SIR,

I RECEIVED your letter of the *eighth* of this month a few days ago. The action in Georgia to which you allude, was inſtituted in the names of Archibald and John Hamilton againſt Dickinſon and M'Iver. My notes on the circuit are ſhort. Sometimes I take none. At the moment I truſt much to memory. As far as notes and memory ſerve, the plaintiffs declared on a bond of date the 10th of Auguſt, 1776. The defendant pleaded that the plaintiffs were on the confiſcation act of North Carolina, and that they made payment to the commiſſioners, &c. The plea alſo ſtated, that the plaintiffs were inhabitants of North Carolina on the 4th July 1776, and continued ſo till September 1777. To this plea the plaintiffs demurred. It is prooable that the rights and true ſituation of the plaintiffs were not ſet forth in the pleadings, at leaſt ſuch was the impreſſion on my mind at the time; for in conſequence thereof, the Court in the courſe of the argument intimated to the plaintiffs counſel, the propriety of amending, in order that the merits might come fairly into view. No notice was taken of the intimation. The argument proceeded, and the deciſion was againſt the plaintiffs. The cauſe in my apprehenſion was ſo clear that I took no time to conſider but inſtantly decided. I think that a writ of error was brought but not purſued. Perhaps by having recourſe to the clerk's office of the Supreme Court you will find the proceedings returned with the writ of error.

I am Sir your obedient Servant,

WILLIAM PATTESSON.

Mr. READ.

New

New Brunſwick, 27th May, 1799.

SIR,

I FIND on my notes an action of the following deſcription,

Thomas Mutter of North Carolina, Archibald Hamilton of Great Britain, and John Hamilton of Virginia,	againſt William Moore	In debt.

The declaration ſtates, that A. and J. Hamilton, are ſubjects of the King of Great Britain. The defendant pleaded, that the plaintiffs are on the confiſcation act of North Carolina, and payment to the commiſſioners. The plea ſtates, that the ſaid A. and J. Hamilton were inhabitants of North Carolina on the 4th July 1776, and continued to be ſo till September 1777. To this plea the plaintiffs demurred. I well remember that it was urged by Mr. Noel, one of the counſel on the part of the defendant, that all inhabitants became citizens by the declaration of independence; on this point the Court gave no opinion, it was not neceſſary, the caſe did not require it. As it was admitted by the pleadings that A. and J. Hamilton were inhabitants of North Carolina on the 4th July 1776, and continued to be ſo till September 1777, a period more than ſufficient for them to make their election agreeably to the law of nations, I conſidered them as citizens of North Carolina, and not as ſubjects of the King of Great Britain. So the law appeared to me as ariſing on the facts detailed in the pleadings. In my judicial capacity I was obliged to take the caſe from the declaration, plea, and demurrer, but I intimated more than once the propriety of moving to amend the proceedings. It was not done. The deciſion paſſed againſt the plantiffs. I cannot undertake to ſay of what opinion the Court would have been, if the plaintiffs had replied,—that they were ſubjects of His Britannic Majeſty, and alſo the Treaty of Peace. On my ſame notes I find an action in the name of A. and J. Hamilton againſt Dickenſon and M'Iver, which is ſtated in my former letter. Perhaps the two cauſes were argued together, but if they were not, and an argument on one of them only was had, it muſt have proceeded on the demurrer to the plea in the action of Moore. You will be pleaſed therefore to conſider my former letter as applicable to this caſe.

The diſtinction between a Britiſh ſubject reſiding in England, and an American Britiſh ſubject, never entered my head. The only enquiry was, whether it ſufficiently appeared on the pleadings that the plaintiffs were Britiſh ſubjects and could avail themſelves of the Treaty.

I am, Sir,

Your obedient humble ſervant,

WILLIAM PATTERSON.

MR. READ.

Theſe

Theſe will ſatisfy the Board of the erroneous ſtatement made by the Agent for Claimants of the learned Judges opinion. From what ſource he drew his information the Agent for the United States is at a loſs to know, as he has never ſeen nor heard of any *authentic* report of this caſe, other than what is contained in the foregoing letters. By theſe the plaintiffs appear to have been conſidered from the pleadings as ſubjects of North Carolina, who as ſubjects had been puniſhed by a forfeiture of their debts, and not as alien enemies, whoſe debts had been confiſcated by the right of war. Of courſe, there is no inconſiſtency between the opinions given by the ſame Judge, in this caſe, and the caſe of *Jones* againſt *Hylton*, as the Agent for Claimants has ſuppoſed, nor did the Judge take a diſtinction between a Britiſh ſubject reſident in Great Britain, and a Britiſh ſubject reſident in America. According to the pleadings, the plaintiffs appeared to be not ſubjects of Great Britain, but ſubjects of North Carolina; and being ſo, the forfeiture by legiſlative act of the State was deemed in full force againſt them. Thus the opinion of Judge *Patterſon* correſponds with every thing advanced by the Agent for the United States relative to *Andrew Allen*. *Firſt*, that he ſhould be conſidered as a ſubject of Pennſylvania. *Secondly*, if he was to be conſidered as a Britiſh ſubject, that he would be competent to recover in the American Courts of Juſtice his confiſcated debts.

Douglaſs vs. Stirk, in Georgia.

The opinion of Judge *Iredell* in this caſe is ſet forth in the propoſed reſolutions in *Ingliſ's* caſe *(printed copy, page 48.)* The plaintiff is explicitly ſtated to be "*a citizen of the State*, baniſhed from it, and his eſtates and debts confiſcated," as a puniſhment by a State of one of its citizens, and judgment is given againſt his right to maintain his action.

The Board may thus from a review of theſe caſes be ſatisfied, that the Agent for Claimants has miſtaken the purport of theſe deciſions and opinions, when he ſays that they prove the aſſertion, "that in the ordinary courſe of judicial proceedings, *Britiſh ſubjects* who were attainted by American Legiſlatures, "cannot recover their juſt debts, and that diſtinctions in the American Courts "are made between American Britiſh ſubjects and real Britiſh ſubjects," they certainly prove that in the ordinary courſe of judicial proceedings, American ſubjects, who were attainted by American Legiſlatures, cannot recover debts that had been forfeited for crimes.

Deeming it ſuperfluous, the Agent for the United States will not trouble the Board with any remarks upon the various other matters contained in the reply.

JOHN READ, *junior*,
General Agent for the United States.

June 25th, 1799.

COMMISSIONERS' OFFICE,
Philadelphia, June 26, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. CUIL[illegible]MARD.

In the Caſe of ANDREW ALLEN.

THE BOARD taking into their conſideration the following paſſage in the obſervations on the reply, viz.

" In the caſe of Doctor *Inglis*, the Board on the 21ſt May 1798, reſolved, " that " " the Claimant's character of Britiſh ſubject was not affected or impaired by the " " act of attainder and confiſcation paſſed by the State of New York on the 21ſt " " of October 1779, attainting him, the Earl of *Dunmore*, Governor *Tryon*, Sir " " *Henry Clinton*, and many other Britiſh ſubjects, who are therein deſcribed, *not* " " *as ſubjects of the State, but as perſons holding or claiming property within the* " " *State*, and forfeiting and confiſcating their whole eſtates real and perſonal, for " " their adherence to His Britannic Majeſty; but that on the contrary, the ſaid " " act of attainder, and the deſcription of loyaliſt or refugee, applied to the " " Claimant on the part of the United States, in conſequence of his ſaid adhe- " " rence, are concluſive evidence that he ſtill retained his original allegi- " " ance: that therefore he is entitled to claim before this Board under the *fourth* " " article of the Definitive Treaty of Peace, and [illegible] article of the Treaty " " of Amity, between his ſaid Majeſty and the United States." " This reſolu- " tion has been exactly recited, becauſe it may be underſtood to have omitted the " caſe of the Claimant, who in the act of attainder and forfeiture is expreſsly de- " ſcribed as a ſubject of the State of Pennſylvania, and puniſhed as ſuch by a for- " feiture of his eſtates and debts. Indeed the expreſſions in this reſolution ſeem to " imply, that if Doctor *Inglis* had been attainted *as a ſubject of New York, and* " *his debts confiſcated for a crime committed by him as a ſubject*, the Board would

" have diſmiſſed his claim. The diſtinction ſo explicitly taken by the Board, be-
" tween attainting and puniſhing a man as a *ſubject*, and attainting and puniſh-
" ing him " *as a perſon holding or claiming property within the State*," muſt have
" been meant for ſome uſe. At all events, this reſolution cannot be conſidered as
" deciding that the *fourth* article of the Treaty of Peace ſet aſide legiſlative acts of
" attainder and forfeiture, paſſed againſt individuals deſcribed and holden as ſub-
" jects of the State, and puniſhing them for their criminal conduct. There is cer-
" tainly a difference between a confiſcation of an enemy's property by the right
" of war, and a forfeiture of a ſubject's property by law for criminal conduct:"

RESOLVED, that in the abovementioned reſolution in the caſe of Dr. *Inglis*, the Board did not decide on the diſtinction ſtated in the above paſſage to be " between attainting and puniſhing a man as a ſubject, and attainting or pu-
" niſhing him as a perſon holding or claiming property within the State;" having only referred to the fact for the purpoſe of ſhewing, that the caſe ſtood clear of all objection on the ground of that alledged diſtinction.

Extracted from the Proceedings of the Board,

G. EVANS, *Secretary.*

COMMISSIONERS' OFFICE,
Philadelphia, 9th July, 1799.

PRESENT.

Mr. MACDONALD,
Mr. RICH,
Mr. FITZSIMONS,
Mr. SITGREAVES,
Mr. GUILLEMARD.

In the Caſe of ANDREW ALLEN.

THE following Reſolution having been the ſubject of full diſcuſſion in the Board during ſeveral ſittings,—Mr. *Macdonald* with the concurrence of Mr. *Rich* and Mr. *Guillemard*, moved that the ſame ſhould be paſſed.

The

The Board having conſidered the "*firſt ground of defence*" taken by the United States in this caſe, as founded on the act of attainder and confiſcation, paſſed by the State of Pennſylvania againſt the Claimant on the 6th day of March 1778, in the following terms, "Whereas *Joſeph Galloway, Andrew* "*Allen*, &c. &c. "*being all ſubjects and inhabitants of the State of Pennſylvania*, "have moſt traiterouſly, and wickedly, and contrary to the allegiance they "owe to the ſaid State, joined and adhered to, and ſtill do adhere to, and "knowingly and willingly aid and aſſiſt the army of the King of Great "Britain, now enemies at open war againſt this State and the United States "of America, and yet remain with the ſaid enemies:—Be it therefore en- "acted, and it is hereby enacted *by the repreſentatives of the freemen of the* "*Commonwealth of Pennſylvania* in General Aſſembly met, and by the autho- "rity of the ſame, that if the ſaid *Joſeph Galloway, Andrew Allen*, &c. ſhall "not render themſelves reſpectively, to ſome one or other of the Juſtices of the "Supreme Court, &c. on or before the 20th day of April next, and alſo abide "their legal trial for ſuch their treaſons, then every one of them ſhall ſtand "and be adjudged, and by the authority of the preſent act be convicted and "attainted of *high treaſon*, to all intents and purpoſes whatſoever and ſhall ſuffer "and forfeit as a perſon attainted of high treaſon by law ought to ſuffer and "forfeit;"—and which "*firſt ground of defence*," taken by the United States on the above act of attainder and confiſcation, is ſet forth in the obſervations on the Reply as follows, viz. "The Claimant has ſtated in his Reply, that it is "not to be diſputed or denied in this caſe, that the Legiſlature of Pennſylvania "proceeded againſt the Claimant as *an inhabitant or ſubject of Pennſylvania*, "and confiſcated his whole eſtate, real and perſonal, debts included; and the "legiſlative act expreſſes, that the attainder and forfeiture was inflicted for the "crime of high treaſon." "That the State of Pennſylvania in paſſing the act "of attainder and forfeiture againſt *Andrew Allen* the Claimant, deſcribed "and conſidered him as *a ſubject*, is apparent from the words of the act. If "he had not been a ſubject of Pennſylvania, he could not have committed "the crime of treaſon, of which he was by legiſlative act attainted. That "legiſlative act is itſelf evidence, the beſt and higheſt evidence of his being a "ſubject of the State. Such faith is due to the act of a Legiſlature of an "independent State, that other teſtimony of the facts contained in it, is not "to be required. On the act of attainder and forfeiture therefore, the Agent "for the United States might reſt as ſufficient proof, that the Claimant was a "ſubject of Pennſylvania. Aware of this, the General Agent for Claimants "has advanced the extraordinary poſition,—that the Treaty of Peace is the "only point of time from which agreeably to the Britiſh conſtitution and laws, "the United States ceaſed to be a part of the Britiſh empire.—According to "this doctrine, Pennſylvania was not an independent State until the peace, "for ſhe could not be an independent State while ſhe remained a part of the "Britiſh empire. According to this doctrine her legiſlative acts prior to the "Peace, are not to be regarded as the acts of an independent State.—This "poſition being important to the juſt deciſion of this claim ſhall be ex- "amined. When the United States became independent and took their place "among the nations of the earth, is a matter not to be determined agreeably "to the Britiſh conſtitution and laws, but agreeably to the laws of nature and "of nations. *In fact they were independent ſo early as* 1775, and *on the ever*

glorious

" *glorious and memorable fourth of July* 1776, they ſolemnly and formally de-
" clared to the world they were independent, and from *that* period have
" maintained their independence with honour and proſperity.—Prior to the
" Treaty of Peace they made Treaties of Alliance, Commerce, and Naviga-
" tion, and were thus publicly recognized by Foreign Powers as an independ-
" ent nation. *They carried on war*, they made laws for their own government,
" and did every other act of a ſovereign power. *The formal acknowledgment*
" *by His Britannic Majeſty added nothing to their real independence*, and if the
" Treaty of Peace had never been made, the United States would have actually
" continued an independent *nation*, *though at war with Great Britain to this*
" *moment*. What is it the United States were incompetent to do as a ſove-
" reign power, between the 4th July 1776, and the 3d September 1783,
" which they can now do? " Every nation that governs itſelf under what
" " form ſoever without any dependence on a foreign power is a ſovereign
" " State, its rights are naturally the ſame as thoſe of any other State. Such
" " are moral perſons who live together in a natural ſociety, under the law of
" " nations. To give a nation a right to make an immediate figure in this
" " grand ſociety, it is ſufficient if it be really ſovereign and independent,
" " that is, it muſt govern itſelf by its own authority." *Vattel B.* 1. *S.* 4.
" " When a nation becomes divided into two parties abſolutely independent,
" " and no longer acknowledging a common ſuperior, the State is diſſolved,
" " and the war betwixt the two parties in every reſpect is the ſame with that
" " of a public war between two different nations." *Ib. B.* 3. *S.* 295.—
" Applying theſe paſſages to the ſituation of the Britiſh empire when the Ame-
" rican colonies ſeparated from Great Britain, *declaring their independence and*
" *maintaining it by the ſword*, they prove the ſeveral United States to have been
" independent as early as the *fourth* of July 1776; that day is the anniverſary of
" their ſovereignty, and as ſuch celebrated in every part of the country. In
" the year 1776, the States generally formed their conſtitutions of government,
" ſome of which remain to this moment unaltered; and are conſidered as the
" palladium of their rights, the ſource of all lawful authority. Even in Weſt-
" minſter Hall the Judges have frequently declared, that the acts of the Legiſ-
" latures of the ſeveral States, which were paſſed during the late war, could
" be regarded by them in no other light than acts of independent States.
" Though *Andrew Allen* after being a ſubject to Pennſylvania *joined the Britiſh*
" *forces in December* 1776, *and returned to his natural allegiance*, this did not
" diſſolve the right of Pennſylvania to hold him as its ſubject, and as its ſubject
" to puniſh him: having done this by a legiſlative act, it only remains to be
" conſidered, whether that act was repealed as to debts, by the *fourth* article
" of the Treaty of Peace. The Agent for the United States contends that it
" was not, and that the debts forfeited for treaſon during the war, were not
" embraced by that article, becauſe *Andrew Allen*, and all others in the like
" predicament, were civilly dead as to the United States, and were not creditors
" when the Treaty of Peace was concluded, of the debts that had been forfeited:
" The ſtipulation that *creditors on either* ſide ſhall meet with no lawful impedi-
" ment to the recovery of the full value in ſterling money of all *bona fide*
" debts heretofore contracted, does not include perſons, who *as ſubjects* had
" become deprived of their eſtates and debts for their *criminal conduct*; *Andrew*
" *Allen* having joined the American ſide, as is proved by the higheſt evidence,

the

" the legiſlative act of Pennſylvania, and having deſerted it and thereby incur-
" red a forfeiture of all his rights, is in no point of view to be conſidered as a
" creditor on the Britiſh ſide. To conclude, the firſt ground of defence, if
" the legiſlative act of attainder and forfeiture paſſed by Pennſylvania on the
" 6th of March 1778, is to be conſidered as an act of a ſovereign independent
" State, it is concluſive proof that *Andrew Allen* was *once* a ſubject of Penn-
" ſylvania, and had forfeited his eſtate including his debts prior to the Treaty
" of Peace, for his criminal conduct as a ſubject. If as a ſubject he was at-
" tainted, and puniſhed by a loſs of his debts, the Treaty of Peace did not
" annul the legiſlative act of forfeiture, and reſtore to him a right to recover
" his forfeited debts. If the Treaty of Peace did not reſtore to him a right to
" recover ſuch forfeited debts, there has been no loſs proceeding from a violation
" of it, for which he is entitled to claim before the Board under the Treaty of
" Amity." And in the following paſſage in a ſubſequent part of the paper,—
" The plaintiffs in this caſe (*Hamiltons vs. Eaton*) were allowed by a law of
" North Carolina, together with others ſimilarly circumſtanced, the option of
" taking an oath of allegiance to the State or of departing it. They choſe the
" latter and were never regarded as ſubjects of the State. Their confiſcated
" debts they have been adjudged to be capable of recovering of their debtors.
" It is not to be denied, that the *Chief Juſtice Elſworth* in delivering his ſen-
" timents on this caſe does ſtrongly imply, if the plaintiffs had been claimed
" and holden as citizens, and for their crime had been deprived of their debts,
" that they could not have recovered them under the Treaty of Peace. This
" opinion the Agent for the United States conſiders as a very reſpectable ſup-
" port of the firſt ground of defence taken in this claim;—upon all occaſions the
" Chief Juſtice has been ready to allow the fulleſt force of the Treaty of Peace
" upon caſes within it, and if debts forfeited for treaſon are not in his opinion
" recoverable in the Federal Court, it can only be becauſe he thinks they are
" not within the operation of the Treaty, for if they were, it is difficult to
" aſſign a reaſon why they ſhould not be recoverable at law, as well as debts
" confiſcated by right of war:"—In aid of which argument two letters have
been produced from a learned Judge of the United States *(Paterſon)* to the
Agent for the United States, in anſwer to his enquiries reſpecting the nature
and import of certain deciſions therein mentioned, one of which letters, re-
cited in the *obſervations* dated the 27th day of May laſt, gives an account of the
caſe of *Mutter* and *Hamiltons* againſt *Moore* therein mentioned, as follows, " The
" declaration ſtates that *A.* and *J. Hamilton are ſubjects of the King of Great*
" *Britain.* The defendant pleaded that the plaintiffs are on the confiſcation
" act of North Carolina, and payment to the Commiſſioners. The plea ſtates
" that the ſaid *A.* and *J. Hamilton* were inhabitants of North Carolina, and
" continued to be ſo until September 1777. To this plea the plaintiffs demurr-
" ed. I well remember that it was urged by Mr. Noel, one of the counſel on
" the part of the defendant, *that all inhabitants became citizens by the declara-*
" *tion of independence.* On this point the Court gave no opinion, it was not
" neceſſary; the caſe did not require it. As it was admitted by the pleadings
" that *A.* and *J. Hamilton* were inhabitants of North Carolina on the 4th day
" of July, 1776, and continued to be ſo till September, 1777, a period more
" than ſufficient for them to *make their election* agreeably to the law of nations,
" *I conſidered them as citizens of North Carolina, and not as ſubjects of the King*

" *of Great Britain.* So the law appeared to me as arising on the facts detailed " in the pleadings. In my judicial capacity I was obliged to take the case " from the declaration, plea, and demurrer; but I intimated more than once " the propriety of moving to amend the proceedings. It was not done. The " decision passed against the plaintiffs. I cannot undertake to say of what " opinion the Court would have been, *if the plaintiffs had replied that they " were subjects of His Britannic Majesty*, and *also*, *the Treaty of Peace.*"— " The distinction between a British subject residing in England, and an Ame- " rican British subject, never entered my head. The only enquiry was, whe- " ther it sufficiently appeared on the pleadings that the plaintiffs were British " subjects and could avail themselves of the Treaty."

RESOLVED on the said " *first ground of defence,*" and reserving the other points in the case, that it becomes the Board to refrain from all observation on the *general* questions suggested in the above argument; namely, whether a part of a nation becomes independent of the government which had been established over the whole merely by declaring itself to be so, and supporting such declaration " by the sword?"—whether a part of a nation by thus " carrying on war" against that which had till then been maintained as the government of the whole; " making laws for their own go- " vernment; and doing every act of a sovereign power," does truly become a sovereign power?—whether the assertion be well founded, that " the formal " acknowledgment by His Britannic Majesty added nothing to the *real* inde- " pendence of the United States?"—what would have been the case " if the " Treaty of Peace had never been made?"—whether " the United States " would" have actually continued an " independent nation though at war with " Great Britain at this moment?"—and how far " the celebration in every " part of the country of the ever glorious and memorable 4th day of July, " 1776," (according to the language made use of before the Board) " as the " anniversary of their sovereignty" can affect the present case?—that the Board think it fit also to refrain from all observation on the case which is in substance put, of an *unconditional submission* on the part of Great Britain to the independence of the United States, *and to all that had been done under the authority they exercised*; because the case so put, is not the case which actually exists; there having been no such *unconditional* submission, or acknowledgment of the independence of the United States on the part of Great Britain, but a recognition by solemn Treaty, *containing reciprocal stipulations*, as the price of peace, and for the mutual benefit of *both* countries:—that as it has however been maintained in the Board, that the independence of the United States was complete even as against Great Britain before the Treaty of Peace, it cannot be improper to state, the impressions entertained on that important subject by Judges of great name and authority in the United States, from their opinions judicially delivered, and as the same are recited and referred to in the paper read by Mr. *Sitgreaves*, and put on the minutes of the Board on the 19th day of February last, in the case of the Right Reverend *Charles Inglis*:—that in the case of *Ware* administrator of *Jones* against *Hylton*, decided in the Supreme Court of the United States in February 1796, Judge *Chase*, in stating the outline of *reciprocal stipulation* contained in the Treaty of Peace, expresses himself as follows, " I will now proceed to the consideration of the Treaty of 1783."

It

" It is evident on a perusal of it what were the *great* and principal objects in " view by both parties. There were *four* on the part of the United States, " to wit, *First*, *An acknowledgement of their independence by the Crown of Great* " *Britain*. *Second*, A settlement of their western bounds. *Third*, The right " of fishery, and *Fourth*, The free navigation of the Mississippi. There were " *three* on the part of Great Britain," &c. the recovery of debts provided for by the *fourth* article being referred to as the first of these three objects—and another learned Judge of the United States *(Paterson)* whose opinion in the said case is also recited in the same paper, observes as follows.—" The traders and " others of this country were largely indebted to the merchants of Great Britain. " To provide for payment of these debts, and give satisfaction to this class of " subjects, must have been a matter of primary importance to the British Mi- " nistry. This doubtless is at all times, and in all situations, an object of moment " to a commercial country. The opulence, resources and power of the British " nation, may in no small degree be ascribed to its commerce: it is a nation of " manufacturers and merchants. To protect their interests and provide for the " payment of debts due to them, especially when those debts amounted to an " immense sum, could not fail of arresting the attention, and calling forth the " utmost exertions of the British cabinet. A measure of this kind it is easy to " perceive would be pursued with unremitting diligence and ardor.—Sacrifices " would be made to ensure its success, and perhaps nothing short of extreme " necessity would induce them to give it up."—Conclusions which are not weakened by the consideration, that although it is true the greater part of the " *immense*" debt thus provided for, was due to British merchants, part of it was also due (in the language of the Treaty of Amity) " to others his Majesty's subjects."—That another learned Judge, whose opinion in the case of *M'Call against Turner*, was published at full length, and specially referred to on the part of the United States in their printed answer to the claim of *William Cunningham and Co.* namely Judge *Pendleton*, expressed himself in the *Virginia Convention* (of which he was President) when debating on the adoption of the Federal constitution, as follows, " Congress were empowered to make war and peace. " A peace they made, *giving us the great object, independence*, and yielding us a " territory that exceeded my most sanguine expectations. Unfortunately *a single* " *disagreeable clause*, not the object of the war, has retarded the performance of " the Treaty on our part.—Congress could only recommend its performance, not " enforce it."—That in order to determine the present question, the Board have only to apply the plain and unambiguous terms of the said *fourth* article, for which "*sacrifices*" were thus held to have been, and certainly were made on the part of Great Britain;—and that the terms thereof *are* plain and unambiguous stands confirmed by the respectable authority already referred to. " On the best investigation (says Judge *Chase*) which I have been able to give " the *fourth* article of the Treaty, I cannot conceive that the wisdom of man " could express their meaning in more accurate or intelligible words, or in " words more proper and effectual to carry their intention into execution"—and Judge *Paterson* expresses himself thus—" The phraseology made use of leaves in " my mind no room to hesitate as to the intention of the parties. The terms " are unequivocal and *universal* in their signification, and obviously point to, " and comprehend *all creditors*, and all debtors previously to the 3d September " 1783. In this article there appears to be a *selection of expression*, plain and extensive

" extenſive in their import, and *admirably calculated to obviate doubts*, to remove " difficulties, to deſignate the objects, and aſcertain the intention of the con- " tending powers."—" The words *creditors on either ſide* embrace *every deſcrip-* " *tion of creditors.*"—All credito rs on either ſide *without diſtinction* muſt have " been contemplated by the parties in the *fourth* article: Almoſt every word " ſeparately taken is expreſſive of this idea, and when all the words are com- " bined and taken together, they remove every particle of doubt."—That the ſame impreſſion of the ample, comprehenſive and unreſtrained force of the ſaid *fourth* article, is further confirmed by another learned Judge *(Sitgreaves)* in the opinion delivered by him in the caſe of *Hamiltons againſt Eaton*, in June 1796, alſo referred to and recited in the abovementioned paper, entered on the minutes of the Board in the caſe of *Inglis*; the ſaid learned Judge, in ſtating the general and unlimited import of the expreſſion " *all creditors on either ſide*" in the ſaid *fourth* article, where no other diſtinction of perſon or character was intended than that of being on the one ſide or the other at the peace, having therein re- ferred to the ſeveral diſtinctions of character anxiouſly marked out in the very next article, viz. the *fifth*, where ſuch diſtinctions were intended, (but which *fifth* article has no relation to the recovery of the debts ſecured by the *fourth* article) as follows:—" The *fourth* article contains the only ſtipulation with reſpect to " debts in the whole inſtrument. It is mutual and *general* in its expreſſion, not " limited or reſtrained by any particular words *to any deſcription of perſons*, as " is evident in the *fifth* article. If that had been in the contemplation of the " parties, they could not have overlooked the neceſſity for theſe diſtinctions, nor " are we at liberty to preſume it. In the next article, the diſtinction is made " with great accuracy with regard to thoſe who endeavour to procure a reſtituti- " on of their lands and other property:"—that the extent equally unlimited of the expreſſion "*lawful impediments*" is likewiſe referred to and explained by the ſame, and other learned Judges of the United States, whoſe opinions are quoted in the abovementioned paper, in the caſe of *Inglis*, Judge *Chaſe* having expreſſed himſelf on that ſubject as follows,—" *Shall meet with no* " *lawful impediment*;" that is, with no obſtacle (or bar) *ariſing from the com-* " *mon law*, or acts of Parliament, *or acts of Congreſs*, or acts of any of the " States, *then in exiſtence*, or thereafter to be made, that would *in any manner* " operate to prevent the recovery of ſuch debts as the Treaty contemplated."— " The prohibition that no lawful impediment ſhall be *interpoſed* is the ſame as " that all lawful impediments ſhall be *removed*. The meaning cannot be gra- " tified by the removal of one impediment and leaving another; and *a fortiori*, " by taking away the leſs and leaving the greater; theſe words have both a " *retroſpective* and future aſpect."—Judge *Paterſon*, " The words ſhall meet " with *no lawful impediment* refer to legiſlative acts and *every thing done under* " *them*, ſo far as the creditor may be *affected or obſtructed in regard to his remedy* " *or right*. All lawful impediments of whatever kind they might be whether " they related to *perſonal diſabilities*, *or confiſcations*, &c. are removed. *No* " *act of any State Legiſlature* ſhall obſtruct the creditor in his courſe of recovery " againſt his debtor."—Judge *Cuſhing*, the words " *ſhall meet with no lawful* " *impediment*," are as ſtrong as the wit of man could deviſe *to avoid all effects* " of ſequeſtration, confiſcation, *or any obſtacle* thrown in the way by any law " particularly pointed againſt the recovery of ſuch debts."—And to ſhew that a lawful impediment might operate within the meaning of the Treaty, though there

there ſhould be no *legal debt* at the date of the Treaty of Peace, Judge *Wilſon* obſerves, that the *fourth* article " is not confined to *debts exiſting* at the time " of making the Treaty, but is extended to debts *theretofore contracted*."

That the expoſition thus given, *ſince the Treaty of Amity*, viz. in the year 1796, by the learned Judges of the United States above named, correſponds with the opinion which, on mature deliberation, the Board have clearly formed on this ſubject, and which they now declare, viz.

That the ſame inſtrument, by the *firſt* article whereof His Britannic Majeſty on the 3d day of September, 1783, " acknowledged the United States" (not to have been from the 4th day of July, 1776, but) " *to be* free, ſovereign, and " independent States; that he treated with them as ſuch, and relinquiſhed all " claims to the government, propriety, and territorial rights of the ſame," provided alſo in effect, by the mutual ſtipulation in favor of " creditors on *either* " *ſide*," contained in the *fourth* article thereof, that no act which had then been, or ſhould thereafter be done or paſſed, by or under the authority of the ſaid United States, or any of them, whatever might be its form or import; whatever the terms therein employed; whatever the extent of power thereby aſſumed or declared; whatever the character *thereby* aſcribed to the individual againſt whom it was directed, ſhould be ſuffered to operate as a lawful impediment to the recovery of debts " theretofore contracted" to a creditor on the ſide of His Britannic Majeſty at the date of the ſaid Treaty: Nor can the objection be ſupported, that the above interpretation would extend to the *ordinary operation of criminal law* in caſes of felony, and ſuch other offences as did not ariſe from the part taken by individuals during the war; for ſuch ordinary operation of criminal law thus ſuggeſted as the ground of an objection, has no relation whatever to the ſubject matter of the ſaid article:—That in the caſe of the Right Reverend *Charles Inglis*, the Board by their unanimous reſolution of the *twenty-firſt* day of May, 1798, determined, that an act of the State of New-York paſſed during the war, attainting the ſaid *Charles Inglis* for the imputed *crime of adhering to His Britannic Majeſty* was a lawful impediment within the meaning of the Treaties; the only difference between that caſe and the preſent conſiſting in the different words of deſcription contained in the two ſeveral acts;—but as the act of the State of Pennſylvania cannot have any greater effect or operation againſt the *fourth* article of the Treaty of Peace than that of New York, and as the fact charged to be a crime, viz. adherence to the cauſe of His Britannic Majeſty is the ſame in both caſes, the mere words of deſcription *aſſumed* in the act of Pennſylvania, cannot prove *againſt* the true character of the party as a Britiſh ſubject, or give efficacy to itſelf, ſo as to take the caſe out of the meaning and operation of the ſaid article:—Nor does it appear how the Claimant became lawfully ſubjected to that State any more than the ſaid *Charles Inglis* to the State of New York, or the former leſs entitled to the character of Britiſh ſubject than the latter:—That all *general* argument on the declaration of independence, and the effect of acts done under it, whether by the law of nations, or by virtue of the alledged retroſpect of the above recognition by the Treaty of Peace, is therefore precluded, ſo far as regards the preſent ſubject, *by the plain terms of a poſitive compact*:—That the comprehenſive expreſſion " *creditors on either ſide*," contained in the *fourth* article of the ſaid Treaty, *unreſtrained by exception, by*

deſcription

deſcription of ſpecial character, or *reſtriction of any kind*, was evidently ſelected for the very purpoſe of avoiding all doubts or difficulties, which might otherwiſe have been raiſed upon ſuch diſtinctions of character, as (with reference to a different ſubject) are anxiouſly delineated in the article immediately following:—That if the Claimant could be ſaid to have at any time *made his election* in favour of the United States under the declaration of independence, and ſo departed for a time ſubſequent to that event from his native allegiance, (the contrary of which appears to have been the caſe) his return to, and having been *on the ſide* of his ſaid native allegiance *at the Peace*, would have ſecured to him the benefit of the ſaid *fourth* article of the Treaty.—That accordingly, having been on the ſide of His Britannic Majeſty at the date of the Treaty of Peace; and being a natural born ſubject of his ſaid Majeſty, not barred by the acceptance of citizenſhip, from the right of claiming againſt the United States, the Claimant is entitled under the Treaty of Amity, to complain to this Board of the ſaid act of attainder and confiſcation before recited, as being a *lawful impediment* within the deſcription of the *fourth* article of the Treaty of Peace, and the *ſixth* article of the Treaty of Amity, to the recovery of ſuch debts, as he ſhall prove to the ſatisfaction of the Board, within the meaning of the ſaid Treaties:

And in regard to the ſtatement before recited of the Agent for the United States, which has been referred to in the Board as follows, "even in Weſtminſter Hall the Judges have *frequently* declared, that the acts of the Legiſlatures of the ſeveral States which were paſſed during the late war, could be regarded by them in no other light than acts of independent States;" That no caſe has ever occurred in the Courts of Weſtminſter Hall where the above general propoſition was ſo declared; and occaſions have not *frequently* occurred for conſidering that ſubject; nor is it the practice of the Judges to enter upon the diſcuſſion of matter not neceſſary to the determination of the queſtion before them: but whatever has been ſaid by any of the Judges in Weſtminſter Hall which may be held as applicable to the preſent queſtion, will be found correctly to agree with the principles and concluſions now declared by the Board;—the ſaid principles and concluſions containing nothing inconſiſtent with that perfect reſpect which is due to the Independence of the United States, as the ſame was recognized on the part of His Britannic Majeſty, by the *firſt* article of the Treaty of Peace.

And the ſaid reſolution having been read Mr. *Fitzſimons* and Mr. *Sitgreaves* withdrew.

Extracted from the Proceedings of the Board.

G. EVANS, *Secretary*