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NO. I.

WILLIAMSBURG LODGE OF MASONS.

In 1717, the first regular Grand Lodge composed of representatives from the subordinate lodges, which boasted an immemorial descent, was created in England, with a perpetuity of annual elections of Grand Officers. Under authority derived from England and Scotland, subordinate lodges were established in the Colony of Virginia; and the rank of the lodges, as regulated by the Grand Lodge of Virginia in October, 1786, was as follows:

No. 1—Norfolk, constituted	June 1, 5741
No. 2—Port Royal Kilwinning Cross	Dec. 1, 5755
No. 3—Blandford	Sept. 9, 5757
No. 4—Fredericksburg	July 21, 5758
No. 5—Hampton St. Tammany	Feb. 2, 5759
No. 6—Williamsburg	Nov. 6, 5773
No. 7—Botetourt	Nov. 6, 5773
No. 8—Cabin Point Royal Arch	Apr. 15, 5775
No. 9—York	Feb. 22, 5780
No. 10—Richmond	Dec. 28, 5780
No. 11—Northampton	July 8, 5785
No. 12—Kempsville	Oct. 7, 5785
No. 13—Staunton	Feb. 6, 5786
No. 14—Manchester	Feb. 28, 5786
No. 15—Petersburg	May 6, 5786
No. 16—Portsmouth Wisdom	June 15, 5786
No. 17—Charlotte	July 6, 5786
No. 18—Smithfield Union	Oct. 29, 5786
No. 19—Richmond Randolph	Oct. 29, 5786

A LOST PAPER OF THOMAS JEFFERSON.

BY KATE MASON ROWLAND.

At a creative epoch of American history, there met in the little town of Williamsburg, in the spring days of 1776, the conscript fathers of Virginia, to fashion for themselves and their posterity the first written constitution of a free people. It is urged by some New England writers that Massachusetts, by her charter of 1629, under which she practically governed herself for fifty-eight years, was made "an independent state," and, this should be considered "the first era of American independence." Also that Connecticut in her "Fundamental Orders" of 1639 for the government of the three towns of Hartford, Windsor and Wetherford, the Connecticut Colony, framed "the first written constitution known in history." But these interesting memorials of the seventeenth century were not the governments of "free states," or independent sovereign communities. And Virginia could point to her earliest charter of 1606, as securing to her people "all liberties, franchises, and immunities" enjoyed by the natives of England; while under her third charter, of 1612, she held in 1619 the first Assembly, or representative body to convene on the Western Continent. In 1621, the ordinance settling the Virginia constitution was framed and brought to the colony a few months later. Her Assembly three years afterwards asserted the principle that the royal governor could not lay taxes without the consent of their representatives. So that the Old Dominion led the way in the political institutions of the colonies. There is, however, an English public paper which might, with some propriety, be called the first of written constitutions, namely, the "Instrument of Government" drafted by the Puritans of the Protectorate. While it retained elements in the

office of the executive allying it with the Tudor idea of kingship, it blends with them, in its other departments distinctively democratic features. The three powers created by the articles of the "Instrument," the Protector, Council and Parliament, correspond in a general way to the President, Senate and House of the United States Constitution. And the separation of the executive and legislative power is effected here in a more complete manner than in the English government of to-day, as it has shaped itself under the varying conditions which succeeded the short-lived charter of 1653. The "Instrument of Government" contained also a provision which marks a correspondence with the modern declarations of rights, of which that of Virginia was the forerunner and the model. This is the article securing, though in a limited sense, "religious freedom."⁽¹⁾

In the Virginia Convention, the select committee to whom the great work of forming a government was entrusted, discussed many plans for a constitution that were brought forward by its members, before finally accepting that of George Mason with its accompanying Bill of Rights. What some of these plans were, we may gather from papers of the period that remain to us. The subject was one of deepest interest to all Virginians, and two of them while in Congress, Richard Henry Lee and George Wythe, solicited John Adams, their accomplished New England colleague, to write out his "Thoughts on Government," which they forwarded to Patrick Henry in Williamsburg. Richard Henry Lee wrote a draft of a constitution which he sent on at the same time. The anonymous address on the subject signed "A Native," and patronized by Carter Braxton, also one of Virginia's Congressional delegates, who was supposed by many to be its author, embodied a third scheme for a constitution. But this last was of such an unequivocally aristocratic nature, it was rejected with scorn by the Revolutionary leaders. Jefferson, who

(1) However insincere, some of the language of King James II., in his Declaration of Religious Liberty is quite as pronounced as the "Instrument of Government."—EDITOR.

was likewise in Congress, wrote his plan or "bill" as he called it and sent it on by George Wythe, who left Philadelphia to attend the Convention. This fourth constitution⁽¹⁾ as they are here enumerated, was received too late to be considered by the committee, but in the Convention its preamble was adopted and Wythe says "two or three parts of it were with little alteration inserted" in the constitution as adopted. The Lee constitution is not to be found, though in Lee's letter to Henry enclosing it at the same time with the Adams pamphlet, he mentions three of its provisions. Mr. William Wirt Henry, in his recently published biography of Patrick Henry, calls attention to the "Government Scheme," which appeared in the *Virginia Gazette* of May 10th, which he thinks was probably either Lee's plan, or one drawn up by Henry from the two papers of Lee and Adams. These may be compared now with the Jefferson Constitution here for the first time given to the public.

The public papers of Jefferson were purchased by Congress in 1848, and from these manuscripts was published, in 1854, the well-known edition of Jefferson's "Works" in nine volumes. But a large collection of papers still remained with the family. These are about to become the property of the Federal Government, and they embrace over three thousand of Jefferson's own letters besides some five thousand letters addressed to him, most of them written by men of eminence. But neither among these public or personal papers is there to be found any draft of Jefferson's Virginia Constitution. Yet unknown to his descendants and unreckoned of by historical students, for over a century two copies of this paper in Jefferson's MS. have been lying *perdu*, and now by a happy hazard are brought to light:

By Thomas Jefferson,

A BILL.

For new modelling the form of government and for establishing the fundamental principle thereof in future :

(1) A fifth is said to have been proposed by Meriwether Smith.—Rowland's "George Mason" i, p. 256.—EDITOR.

The legislative, executive and judiciary offices shall be kept forever separate, and no person exercising the one shall be capable of appointment to the others or to either of them.

I. LEGISLATIVE.

Legislation shall be exercised by two separate houses, to wit, a house of representatives and a house of senators, which shall be called the general assembly of Virginia.

HOUSE OF REPRESENTATIVES.

The said house of representatives shall be composed of persons chosen by the people annually on the [1st day of October] and shall meet in general assembly on (the 15th day of November) following, and so from time to time on their own adjournments, or at any other time when summoned by the administrator, and shall continue sitting so long as they shall think the public service requires.

Vacancies in the said house by death or disqualification shall be filled by the electors under a warrant from the speaker of the said house.

All male persons of full age and sane mind, having a freehold estate in [one-fourth of an acre] of land in any town, or in [25] acres of land in the country, and all persons resident in the colony who shall have paid scot and lot to government the last [two years.] shall have right to give their vote in the election of their respective representatives. And every person so qualified to elect shall be capable of being elected, provided he shall have given no bribe either directly or indirectly to any elector, and shall take an oath of fidelity to the state and of duty in his office, before he enters on the exercise thereof. During his continuance in the said office, he shall hold no public pension nor post of profit either himself or by any other for his use.

The number of representatives for each county or borough shall be so proportioned to the number of its qualified electors that the whole number of representatives shall not exceed [300] nor be less than [125]. For the present there shall be one representative for [] qualified electors in each county or borough, but whenever this or any future proportion shall be likely to exceed or fall short of the limits before mentioned, it shall be again adjusted by the house of representatives.

The house of representatives when met shall be free to act according to their own judgment and conscience.

The senate shall consist of not less than [15] nor more than [50] members, who shall be appointed by the house of representatives. One-

third of them shall be removed out of office by lot at the end of the first [three] years and their places be supplied by a new appointment: one other third shall be removed by lot in like manner at the end of the second [three] years and their places be supplied by a new appointment; after which one-third shall be removed annually at the end of every [three] years according to seniority. When once removed they shall be forever incapable of being reappointed to that house. Their qualifications shall be an oath of fidelity to the state and of duty in their office, they being [31] years of age at the least, and they having given no bribe, directly or indirectly to obtain their appointment. While in the senatorial office they shall be incapable of holding any public pension or post of profit either themselves or by others for their use.

The judges of the general court and of the high court of chancery shall have session and deliberative voices, but not suffrage in the house of senators.

The senate and the house of representatives shall each of them have power to originate and amend bills; save only that bills for levying money shall be originated and amended by the representatives only; the assent of both houses shall be requisite to pass a law.

The general assembly shall have no power to pass any law inflicting death for any crime excepting murder and those offences in the military service for which they shall think punishment by death absolutely necessary. And all capital punishments in other cases are hereby abolished; nor shall they have power to prescribe torture in any case whatever, nor shall there be power anywhere to pardon crimes or to remit fines or punishments; nor shall any law for levying money be in force longer than [ten years] from the time of its commencement. [Two-thirds] of the members of either house shall be a quorum to proceed to business.

II. EXECUTIVE.

The executive powers shall be exercised in manner following: One person, to be called the [administrator], shall be annually appointed by the house of representatives on the second day of their first session, who, after having acted [one] year, shall be incapable of being again appointed to that office until he shall have been out of the same [three] years.

Under him shall be appointed by the same house, and at the same time, a deputy administrator to assist his principal in the discharge of his office, and to succeed, in case of his death before the year shall have expired, to the whole powers thereof during the residue of the year.

The administrator shall possess the powers formerly held by the King, only that he shall be bound by acts of legislature though not expressly named;

He shall have no negative on the bills of the legislature.

He shall be liable to action, though not to personal restraint, for private duties or wrongs;

He shall not possess the prerogatives of dissolving, proroguing or adjourning either house of assembly; of declaring war concluding peace, of issuing letters of marque or reprisal, of raising or introducing armed forces, building armed vessels, forts or strongholds; of coining monies or regulating their value; of regulating weights and measures; of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, lighthouses, sea-marks; of levying embargoes or prohibiting the exportations of any commodity for a longer space than [40] days; of retaining or recalling a member of the state but by legal process *pro delicto vel contractu*; of making denizens; of creating dignities or granting rights of precedence; but these powers shall be exercised by the legislature alone, and excepting also those powers which by these fundamentals are given to others, or abolished.

A privy council shall be annually appointed by the house of representatives, whose duty it shall be to give advice to the administrator when called on by him; w^tth them the deputy administrator shall have session and suffrage.

Delegates to represent this colony in the American congress shall be appointed when necessary by the house of representatives. After serving [one] year in that office they shall not be capable of being re-appointed to the same during an interval of [one] year.

A treasurer shall be appointed by the house of representatives who shall issue no money but by the authority of both houses. An attorney-general shall be appointed by the house of representatiyes.

High sheriffs and coroners of counties shall be annually elected by those qualified to vote for representatives; and no person who shall have served as high sheriff [one] year shall be capable of being re-elected to the said office in the same county till he shall have been out of office [five] years.

All other officers, civil and military, shall be appointed by the administrator; but such appointment shall be subject to the negative of the privy council, saving however to the legislature a power of transferring to any other persons the appointment of such officers or of any of them.

III. JUDICIARY.

The judiciary shall be exercised First, by county courts and other inferior jurisdiction ; Secondly, by a general court and a high court of chancery; Thirdly, by a court of appeals. The judges of the county courts and other inferior jurisdictions shall be appointed by the administrator, subject to the negative of the privy council. They shall not be fewer than [five] in number ; their jurisdiction shall be defined from time to time by the legislature ; and they shall be removeable for misbehavior by the court of appeals. The judges of the general court and of the high court of chancery shall be appointed by the administrator and privy council ; if kept united they shall be [five] in number ; if separate, there shall be [5] for the general court, and [3] for the high court of chancery. The appointment shall be made from the faculty of the law, and of such persons of that faculty as shall have actually exercised the same at the bar of some court or courts of record within this colony for [seven] years. They shall hold their commissions during good behavior, for breach of which they shall be removeable by the court of appeals. Their jurisdiction shall be defined from time to time by the legislature.

The court of appeals shall consist of not less than [7] nor more than [11] members to be appointed by the house of representatives : they shall hold their officers during good behavior, for breach of which they shall be removeable by an act of the legislature only. Their jurisdiction shall be to determine finally all cases removed before them from the general court or high court of chancery, or of the county courts or other inferior jurisdictions for misbehavior (to try impeachments against high offenders lodged before them by the house of representatives for such crimes as shall hereafter be precisely defined by the legislature, and for the punishment of which the said legislature shall have previously prescribed certain and determined pains). In this court the judges of the general court and high court of chancery shall have session and deliberative voice but no suffrage.

All facts in causes whether of chancery, common, ecclesiastical or marine law, shall be tried by a jury upon evidence given *viva voce*, in open court ; but when witnesses are out of the colony or unable to attend through sickness or other invincible necessity, their depositions may be submitted to the credit of the jury.

All fines and amendments shall be assessed and terms of impris-

onment for contempts and misdemeanors shall be fixed by the verdict of a jury.

All process original and judicial shall run in the name of the courts from which it issues.

Two-thirds of the members of the general court, high court of chancery or court of appeals, shall be a quorum to proceed to business.

IV. RIGHTS—PRIVATE AND PUBLIC.

Unappropriated or forfeited lands shall be appropriated by the administrator with the consent of the privy council. Every person of full age neither owning nor having owned (50) acres of land shall be entitled to an appropriation of (50) acres or so much as shall make up what he owns or has owned (50) acres in full and absolute dominion; and no other person shall be capable of taking an appropriation. Lands heretofore holden of the crown in fee simple, and those hereafter to be appropriated, shall be holden in full and absolute dominion, of no superior whatever. No lands shall be appropriated until purchased of the Indian native proprietors; nor shall any purchases be made of them but on behalf of the public, by authority of acts of the general assembly to be passed for every purchase especially.

The territories contained within the charters erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by this colony. The western and northern extent of this country shall in all other respects stand as fixed by the charter of—, until by act of the legislature one or more territories shall be laid off westward of the Alleghany Mountains for new colonies, which colonies shall be established on the same fundamental laws contained in this instrument, and shall be free and independent of this colony and of all the world.

Descents shall go according to the law of Gavelkind, save only that females shall have equal rights with males.

No person hereafter coming into this country shall be held within the same in slavery under any pretext whatever.

All persons who by their own oath or affirmation, or by other testimony, shall give satisfactory proof to any court of record in this colony that they propose to reside in the same (7) years at the least and who shall subscribe the fundamental laws, shall be considered as residents and entitled to all the rights of persons natural born.

All persons shall have full and free liberty of religious opinion; nor shall any be compelled to frequent or maintain any religious institution.

No person shall be debarred the use of arms (within his own land or tenements).

There shall be no standing army but in time of actual war.

Printing presses shall be free, except so far as by commission of private injury cause may be given of private action.

All forfeitures heretofore going to the King, shall go to the state; save only such as the legislature may hereafter abolish.

The royal claim to wrecks, waifs, strays, treasure-trove, royal mines, royal fish, royal birds are declared to have been usurpations on common right. No salaries or perquisites shall be given to any officer but by some future act of the legislature. No salaries shall be given to the administrator, members of the legislative houses, judges of the court of appeals, judges of the county courts, or other inferior jurisdictions, privy counsellors, or delegate to the American congress; but reasonable expenses of the administrator, members of the house of representatives, judges of the court of appeals, privy counsellors and delegates for subsistence, while acting in the duties of their office, may be borne by the public if the legislature shall so direct.

No person shall be capable of acting in any office, civil, military (or ecclesiastical) who shall have given any bribe to obtain such office, or who shall not previously take an oath of fidelity to the state.

None of these fundamental laws and principles of government, shall be repealed or altered, but by the personal consent of the people on summons to meet in their respective counties on one and the same day by an act of legislature to be passed for every special occasion; and if in such county meetings the people of two-thirds of the counties shall give their suffrages for any particular alteration or repeal referred to them by the said act, the same shall be accordingly repealed or altered, and such repeal or alteration shall take its place among these fundamentals and stand on the same footing with them in lieu of the article repealed or altered.

The laws heretofore in force in this colony shall remain in force, except so far as they are altered by the foregoing fundamental laws or so far as they may be hereafter altered by acts of the legislature."

Jefferson's preamble, which was adopted, with slight alterations, by the convention, is almost word for word the same as the indictment of George III., which he embodied later in twenty

articles, in his draft of a Declaration of Independence. But as adopted, the preamble concludes in these words:

"By which several acts of mis-rule, the government of this country, as formerly exercised under the crown of Great Britain, is totally dissolved. We, therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy country must be reduced, unless some regular, adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the general congress, do ordain and declare the future form of government of Virginia to be as followeth."

In the original paper King George is deposed and all his royal house. The words are :

"By which acts of mis-rule the said George Guelf has forfeited the kingly office and has rendered it necessary for the preservation of the people that he should be immediately deposed from the same and divested of all its privileges and prerogatives.

"And forasmuch as the public liberty may be more certainly secured by abolishing an office which all experience has shown to be inveterately inimical thereto, and it will thereupon become further necessary to re-establish such ancient principles as are friendly to the rights of the people and to declare certain others which may co-operate with and fortify the same in future; be it therefore enacted by the people that the said George Guelf be, and he hereby is deposed from the kingly office within this government and absolutely divested of all its rights, powers and prerogatives: and that he and his descendants and all claiming by or through him, and all other persons whatsoever [paper torn] incapable of the same: and that the said office shall henceforth [paper torn] and never more, either in name or substance, be re-established within [paper torn.] And be it further enacted by the authority aforesaid that the following fundamental laws and

principles of government shall henceforth be established." Jefferson wrote on the outside of the paper, beneath the title:

"It is proposed that this bill, after correction by the convention, shall be referred by them to the people, to be assembled in their respective counties; and that the suffrages of two-thirds of the counties shall be requisite to establish it."

Mr. Worthington C. Ford, in a letter to the New York *Evening Post* of August 7th, 1891, a letter published also in *The Nation*, tells of the discovery, near Lexington, of the two drafts of the Jefferson constitution and gives extracts from it. Doubtless it will be included in the complete edition of Jefferson's works, edited by Mr. Paul L. Ford, which is soon to make its appearance.

Mr. W. C. Ford observes upon the circumstances of Jefferson's apparent indifference to this early sketch of his, and says that "it allowed John Adams to pose as the mainstay of the Virginia convention." Mr. Henry seems inclined also to give John Adams credit for influencing the convention through his pamphlet. He singles out the fifteenth section [thirteenth in Mason's draft] of the Declaration of Rights, as basing "free government upon the foundation suggested by John Adams." And of the Constitution he says, "it is apparent that the plan of Mason was framed upon the plan published in the *Gazette*, whose resemblance to the views of John Adams has been noted." But why deny to Mason all credit for originality in his draft of a constitution, simply because other plans, more or less resembling his were before the convention? One may quite as reasonably assume that George Mason when he appeared in Williamsburg on the seventeenth of May, three days after the committee to frame a constitution was appointed, and ten days after the meeting of the convention, did not come empty-handed. And there is, in fact, good reason to believe that he brought his draft of a declaration of rights and constitution with him, having written them without knowledge of the Adams pamphlet, which was

sent from Philadelphia the 20th of April, and was received before his arrival. The concluding portion of the thirteenth section of the Declaration is found, differently worded, in a paper of Mason's drawn up in 1775, a paper which enunciates more than one of the principles given by him to the world in 1776.

In comparing the Jefferson constitution with that of Mason, it will be seen that while both statesmen were observant of the great law taught them by Montesquieu, of the separation of the three departments of government, the legislative, the executive and the judicial, the powers of the former departments were more judiciously adjusted in Mason's scheme than in that of the younger political philosopher. Jefferson, in his plan, it is noticeable, traces out a judiciary system for the commonwealth. George Mason left this to be determined by legislature at a later period. From the "Rights" of Jefferson's paper is taken the twenty-first article of the constitution, relating to the boundaries of Virginia, and the purchase of lands from the Indians, the convention amending it by one short additional section. A unique provision of Jefferson's "Rights" is that relating to slaves. And, in conclusion, attention may be called to the fact that Jefferson, like George Mason, declared the doctrine of religious liberty. As this section of the Declaration of Rights and the thirteenth, also, are both found in the two manuscripts of this paper extant, which were asserted by Mason to be the original draft "*just as it was drawn and presented*" by him to the Virginia convention, a denial of them to Mason would invalidate equally his authorship of the remaining articles. And it is significant that the claim made, in this connection, for Patrick Henry, is based *solely* on a misleading reminiscence of the same historian who elsewhere declares that while "many projects of a Bill of Rights and Constitution" were brought forward, "*that proposed* by George Mason swallowed up all the rest, by fixing the grounds and plans" of the two papers subsequently adopted."