As to the action of the previous Governor referred to by Governor Denny—of course, he was John Evans, Lieutenant Governor, 1704–1709, under William Penn, himself—the House said that instancing his refusal to hear an Impeachment as a Virtue "must certainly arise from your not being acquainted with his Character. He was a Gentleman remarkable for being destitute of every Virtue, either Moral, Political or religious. The Government was in a continual Ferment during his whole Administration; The Rights of the People in perpetual Jeopardy by his Arbitrary and unjust invasions. He was charged by the Assembly with being Guilty of Frequent and notorious excesses and Debaucheries, not fit to be rehearsed and that his Behaviour was offensive to God Almighty; Dishonourable to the Queen, and Encouraging all manner of Wickedness and upon their Complaint removed from his Government. Whence we are induced to believe that this Gentleman’s declining to determine on Impeachments did not proceed from any Disrelish he had to Power or from his Virtues, either Publick or Private but from a determined Resolution to protect a Favourite.”

The ingenious argument from the Charter, while wholly unsound, is, at least, understandable. In England were Commons, Lords, King: in Pennsylvania, as the power to veto legislation was reserved to the Crown, the King must be considered part of the Legis-
lature: then, as admittedly the Assembly corresponded to the Commons, consequently, the Governor must correspond to the Lords. Of course, the fallacy is in considering the Governor who represented the King, as a separate "Estate."

In the Governor’s Message of January 24, 1758, which the Secretary was directed not to deliver until the Trial of Mr. Smith, the Provost (shortly to be mentioned), was over, "as it would be to no Purpose to deliver it sooner," Governor Denny resents the imputation of falsehood, and says that the opinion of a previous Assembly did not advance matters, as no instance of the exercise of the alleged power had been adduced—as to Governor Evans, he said: "You fall upon his Memory in the bitterest Terms of reproach, declaring him destitute of every Virtue, Moral, Political or Religious, and alledging in Proof thereof, that he was charged by the Assembly with a Misbehaviour offensive to God Almighty; If the Charges, Gentlemen, which are made by the Assemblys of this Province against their Governors could be admitted as any Proof of their Guilt, it has been our Misfortune that this Province has scarcely had an honest or a Good Governor in it." Rather neat, that! He proceeds: "Mr. Evans in all his writings, shows himself to have been a Gentleman of Learning; and we know that he was supported in this Instance by the Advice and Assistance of an Able Council and a Judge famous for his Integrity and his Abilities in the Law. His Messages prove that he had Political Virtues, and Whatever you may be pleased to alledge to the Contrary, the Refusal mentioned above will ever be an Instance of his Moral Virtue. Almost every civilized Nation Suffers their Dead to rest in Peace; and surely, Gentlemen, it may be enough for you that you can use an unbounded Freedom in Calumniating your Living Governors, without raking into the Ashes of those that are no more."
As to the argument that he was a Middle State—"I must confess, Gentlemen, that your method of Reasoning on this Occasion is very Dark and mysterious; a middle state in a Legislature consisting of Two Estates only, or an intermediate Term between two that admit of no Third, is to me incomprehensible." This, of course, is mere logomachy, mere trifling with words, of which the best that can be said is that it is a fit mate for the argument it was supposed to meet. He comes out plainly: "Upon the whole, Gentlemen, give me Leave to tell you once for all that I neither will consent to take upon me the Powers you offer, nor yet to remove Mr. Moore from his Offices without a full hearing, in order to satisfy myself of the Truth of the Charges against him, agreeable to the Practice of all preceding Governors of this Province on Complaints exhibited against Justices of the Peace... My motive for refusing the Power of Judging on Impeachments does not arise, as you insinuate, from any desire in me to screen Mr. Moore from Justice; he is a Gentleman with whom I have not the least acquaintance nor is he so much as personally known to me."

The Assembly went on with the proceedings against Moore and Provost Smith, shortly to be spoken of: on the termination of these proceedings, Governor Denny fixed a day, Thursday, August 24, 1758, for hearing the charges against Moore. On that day and the next, the parties and their witnesses were heard, the evidence being taken down by Mr. Chew; and, Saturday, August 26, all the Council concurred in the "sentiment that Mr. Moore had purged himself from every one of (the charges) and appeared to them to be perfectly innocent, the Governor declared the same and that he never heard a more clear and full defence."

The House was not in Session, but when it did meet in September, the Governor did not make it aware, officially, of what had been done. The unreasonable...
of the claims of the Assembly, however, seems to have been tacitly acknowledged by Franklin, as we find no mention of these in the Complaints laid before the Proprietaries in London, August 20, 1757, by Benjamin Franklin, Agent for the Province of Pennsylvania.\textsuperscript{34}

But though the acquittal of Moore must have been common knowledge, we find, March 27, 1759, the following Resolution of the House presented to His Honour—\textit{Resolved, That as the Governor hath not been pleased to give any redress to or even take Notice of an Aggrievance complained of in the Address lately presented to him by the Assembly under which the Inhabitants of Chester County have long suffered from the Continuance of William Moore in Commission as a Magistrate amongst them, the House will remonstrate to His Honour at some more convenient time, upon so manifest a Delay of that Justice and Protection which he has power to afford and undoubtedly owes to the oppressed inhabitants of the said County.}’

The Governor did not deign a reply, although he continued in office and quarrelling with the Assembly until he made way, November 17, 1759, for James Hamilton appointed by “the true and absolute Proprietaries and Governors-in-Chief,” Thomas Penn and Richard Penn, July 19, 1759.\textsuperscript{35}

So passed over the “Impeachment” Episode; but there was much more to follow and that much more far-reaching, involving as it did the continuity of a Popular House irrespective of General Elections causing a complete or partial change of personnel. When Moore was first made aware of the request by the House of Assembly for his removal, he wrote an Address to the Governor which was the cause of much turmoil and unusual proceedings.

The Address is dated October 19, 1757, and it must be admitted that it is a somewhat startling production. He begins by stating that the “Late Assembly of this
Province, upon a Number of groundless and scandalous Petitions most shamefully procured . . . by one or more of their own Members” had presented to His Honour and ordered “to be published in the Common Gazette a most virulent and scandalous Address charging him in the bitterest Terms with divers misdemeanors and corrupt Practices in . . . Office without exhibiting any other Proof thereof than their own unjust Allegations, founded on the Evidence of the said Petitioners procured as above and taken ex parte before themselves. . .” He then submits what he thinks should be said “in Justice to” his “own Reputation least the aforesaid Address should fall into the Hands of any Person who may not know the Character of the late Assembly nor the particular Motives of their Rancour against him,” which he says is all due to personal reasons.

In 1755, the country was “in the utmost Confusion and Distress and the Savage Knife of the Enemy hourly plunged in the Breast of some of the miserable Frontier Inhabitants.” Moore “joined in representing to the Assembly . . . the alarming Situation of the Country thro’ the want of a Militia Law . . . beseeching the Assembly at the same time if their Consciences tied them up from doing their Duty in points of such high Consequences to the preservation of the Lives and Properties of People committed to their protection, to resign their Seats to others.” Obviously Moore was not a Quaker.

He drew up a Petition and signed it with thirty-five of his neighbors, dated November 5, 1757, to the Assembly in that sense; and from the presentment of that Petition, he dates the virulence of the party (i. e., the Quaker party) against him. To that Petition, he attributes “all the Petitions procured against me by one of the Members or rather Tools of the late Assembly, thro’ the most unjustifiable Practices, many of them at
a Tavern and at a Time when the Petitioners were rendered incapable of reading and Knowing What they signed, and by the same Methods might have been made to sign Petitions against their nearest and most innocent Relations."

The Address to the Governor from the Assembly, he says, is "one Continued String of the severest Calumny and most rancorous Epethets conceived in all the Terms of Malice and Party rage ... It asserts evident Falsehood ..." and the conduct of the Assembly "must be an Inlet and Encouragement for much False Swearing." The Assembly "wickedly ... and designedly to oppress ... me ... have" encouraged "... the bringing a Number of Petty Petitions before them by corrupt and wicked Practices, in order to gratify their Party Rancour ...," when they should have "employed their Time and the Publick Money to better Purposes by taking Pity on the Sufferings of their Distressed Constituents and putting their Country in a Posture of Defence," which "might have saved the shedding of much innocent Blood and prevented much Strife and Contention among Neighbours." Considerable space is allotted to assailing these "Tyrants and Oppressors," their "bitter Persecution and severe Calumny," whose "particular Talent and Characteristic have been Slander and Obloquy" and their Message to the Governor, "a standing monument of Scurrility and abuse, seldom equalled in any Civilized Country"—and the like.

This was, of course, a plain charge of dishonesty, fraud and conspiracy to destroy a political opponent; and a more serious charge in more virulent language was never made against any body of men.

As we shall see, Moore had it published in the Pennsylvania Gazette and other papers. When this Address of William Moore to the Governor, containing such extraordinary charges, came to the knowledge of Mem-
bers of the House, there was no little excitement. It is true that the persons assailed were Members of the preceding Assembly; but those of the existing Assembly considered the Assembly as such, insulted.

As the Assembly had published their Address to the Governor demanding his removal in the *Pennsylvania Gazette* conducted by David Hall, their own printer, Moore naturally thought it advisable to have his side of the dispute brought before the public by the same medium. He asked to have his Address published in the *Gazette*. Hall refused at first, but later saw the Speaker and two other Members of the preceding House and they advised him to publish it, which he did. Subsequently, Colonel William Bradford published it in his *Pennsylvania Journal*.

And now appears a more noted and more important person than even "William Moore, Esquire, of Moore Hall, in Chester County in Pennsylvania, the First Judge of the Common Pleas and one of the Justices of the Peace for Chester." William Smith, born in Aberdeenshire, September 7, 1727, was educated in the University of Aberdeen, from which he graduated, M. A., in March, 1747. He went to London, where he remained for several years in the interests of the Society for the Education of Parochial Schoolmasters; and apparently, he was, at least part of the time, clerk for the Society for the Propagation of the Gospel.

He sailed for New York in March, 1751, as tutor to two young Americans who were returning home, sons of Colonel Martin of Long Island. A pamphlet which he published early in 1753, while residing with Colonel Martin, and styled *A General View of the College of Mirania*, contained his views "of a College suited to the circumstances of a young country." In April, 1753, a copy was sent to Benjamin Franklin: this led to a correspondence which had important results.

In 1749, there had been founded, with Franklin as
President, "The Publick Academy in the City of Philadelphia," which received incorporation from the Proprietaries, Thomas Penn and Richard Penn, in 1753, as an Academy and Charitable School. Franklin still being President of the Trustees, Smith came to Philadelphia and was offered the Presidency of the Academy which he accepted on condition of being allowed first to go to England and take Holy Orders. Smith went to England where he took Holy Orders in the Church of England in December, 1753. Taking a deep interest in the poor Protestants, who had "for many years . . . flock'd from divers parts of Germany & Switzerland to our Colonies particularly to Pennsylvania," he succeeded, in 1754, in forming a Society called The Society for the Education of Germans in America, headed by the well known Earl of Shaftesbury, his connection with which was a little later to result in important consequences to himself.

Sailing from London, April 5, 1754, on the Falcon, he arrived in Philadelphia, May 22; and, two days afterwards, was "inducted Provost of the College and Academy of Philadelphia and Professor of Natural Philosophy." It was not, however, until May 27, 1755, that the style "Academy and Charitable School" was discontinued and a Charter for "the College, Academy and Charitable School" obtained. The first Class of Graduates were laureated in 1757.

Although the Provost was exceedingly busy, as he was very successful, in his academic work, he did not forget the poor Protestant Germans. He was a Trustee of the Society already named which had for its object the education of the German-speaking, furnishing them with schools, school-masters, preachers, &c., looking to the adoption by them of "our language, our manners, our interests" and their incorporation "with us in one enlightened happy Society."

In that view, he had founded and was conducting a
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newspaper printed in German and circulating amongst those speaking that language. It appears that the Provost had advised the publication of Moore’s Address in the Gazette. He, certainly, sometime after its publication in the Gazette and Journal, had it translated into German and published in his German newspaper—it seems reasonably clear that he and Moore acted in concert.

The Assembly determined to make an example of him, and directed his arrest as well as the arrest of Moore; and on January 6, 1758, both were arrested by the Serjeant-at-Arms and held in close custody, their arrest being effected “at the Coffee-House where they happened to be.”

Moore was brought to the Bar of the House. He was called on to answer the former charges of misconduct as a Justice of the Peace and also for writing and publishing his Address to the Governor which the House had resolved to be a Libel against their Constitution and the very being of Assemblies. It will be observed that the House made a fundamental error; whatever may be in English Law the right in an Assembly to punish for Contempt—and this will be discussed later—there is none to punish for Libel: Libel, civil or criminal, is for the Courts.

Moore on being called upon to answer, denied, as he had previously denied, the right of the House to try him for alleged misfeasance of office. As to the alleged Libel, he admitted writing and publishing it, but denied the right of the existing House to take cognizance of it as it did not refer to them—in any case, the publication was in self-defence, not maliciously to attack the House. He cited the high authority of Coke that this could not be considered a Libel, and he denied the right of the House to try for a Libel on the Constitution or on Assemblies. He was promptly convicted and sent to the Common Gaol for all the offences charged

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against him; and now followed perhaps the most extraordinary of all the extraordinary proceedings in this extraordinary case. Those "freemen" representing the Freemen of Pennsylvania, and asserting and reasserting that they claimed and intended to vindicate the rights of English freeman denied the convicted man the right which had after many years of strenuous effort been wrung from the Crown—they ordered "James Coultas, Esqr, Sheriff of the City and County of Philadelphia," "not to pay regard to any of His Majesty's Writs of Habeas Corpus that should be to him directed in the case of William Moore as he should answer at his peril."

Then came the Provost's turn. He was set to the Bar charged with "abetting and promoting the writing and publishing of a Libel entitled the Address of William Moore." He pleaded innocence—in vain, for he was told that the House had abundant proof of the charge made. He then pointed out that Moore had acknowledged the writing and publication and had been punished for it. Of course, that was no answer in law or in morals. He then raised his strongest defence, namely, that the words were not used of the existing House, and that if the House could deal with words used concerning the immediately preceding House they could go back to the beginning of the Government. He also appealed to an Englishman's right to be tried by a Jury of his peers. All these and other pleas were advanced in vain: the Provost being removed, the House resolved that they would hear no argument either as to their authority and power to take cognizance of the charge or as to the Address being a Libel. On the latter point they were undoubtedly right. The first step is for the House to declare the obnoxious conduct to be a Contempt, then to resolve to call on the person charged for his defence. The House since the times of King Richard II has not allowed its deter-
mination as to the nature of the offence to be questioned. But argument should have been allowed as to the right to deal with the matter at all.

Mr. Smith was recalled, informed of the decision of the House and directed to be ready for trial on the following Tuesday, being informed that he might have the assistance of Counsel. Counsel being prohibited from arguing the only matters about which there was or could be any doubt, this was an empty concession.

However, Mr. Smith feared that if he declined to defend himself, the Assembly would consider that a Contempt and imprison him, and so he made up his mind to prepare for trial. Submitting himself to the determination of the House, he chose as Counsel, his close friend, the Attorney-General, Benjamin Chew, and also John Ross and William Peters. The House allowed Ross and Peters, but said that the Attorney-General could not be allowed to plead at their Bar for any prisoner, that being inconsistent with the nature of his office. In this, they were clearly wrong; he was not their officer, they did not pay him, he represented the Crown not the House.

The trial came on and continued for several days. The publication in the *Gazette* and *Journal* was proved as having preceded by some weeks that in the German paper. It was proved that nearly twenty persons had been consulted and applied to by Moore about publishing the Address and Mr. Smith was among the most innocent, &c., &c. But to no avail—the House adjudged him "guilty of promoting and publishing a false, scandalous, virulent and seditious libel against the late House of Assembly, highly derogative of and destructive to the privileges of the Assembly." It is to be noted that there is here no reference to existing House; and the address of the Speaker to the convicted man is equally silent in that regard:

"Mr. Smith: This House, having inquired into the
charge against you have found you Guilty of Promoting and publishing the libel entitled 'The Address of William Moore, Esqr.' and do order that you be committed to the Gaol of this County until you make Satisfaction to this House.'

So far the actions of the House can be excused. They had, indeed, exceeded their jurisdiction, but that may well have been due to an honest mistake. But the next proceeding is not consistent with common honesty. In the Warrant of Commitment (which alone could be looked at in an application for discharge under Writ of Habeas Corpus) the ground of committal is changed from the actual conviction to one which beyond question would prevent a discharge under the Writ. The conviction is stated in the Warrant to Sheriff Coultas as being "for promoting and publishing a false, Scandalous, virulent and Seditious Libel against the last House of Assembly of this province and highly derogatory of and obstructive to the Rights of this House and the privileges of Assembly..." (The italics are mine.) Here the rights of the existing House are said to have been interfered with, which has not been found.

Mr. Smith had, then, a perfect right to charge, as he did, in his Appeal to the King-in-Council, "that the words in the said Commitment which appear... to imply a Breach of Privilege, were untruly inserted therein on purpose to exclude the Petitioner from... legal Relief as there was no Breach of Privilege intimated in the Sentence passed against the Petitioner by the House and as he was never charged, even by the Assembly, with the least Indecency of Behaviour or mark of Disrespect to the House during the whole process nor with any other matter that could be construed a Breach of Privilege of the Assembly then convened."48

Immediately after his "conviction," Mr. Smith tendered an appeal to the King and prayed that the appeal
should be entered on the Minutes of the Assembly. He was angrily asked, "If they were to be directed by him how to keep their Minutes;" and his perfectly proper and regular request was refused, as was his further request that the Clerk should transmit to His Majesty, copies of all the proceedings in his case. The Speaker "read a form of acknowledgment made by the Bishop of Bristol in King James the First’s time and" intimated "that the same would be sufficient for" Mr. Smith—but he rose, and with great dignity, said: "Mr. Speaker, I cannot make acknowledgments or profess contrition. No punishment which this Assembly can inflict on me would be half so terrible to me as suffering my tongue to give to my heart the lie." This brought a storm of applause from many of those present, "all of more or less prominence in the then little town; Thomas Willing, Lynford Lardner, Richard Hockley, William Peters, John Wallace, John Bell, James Young, Captain Vanderspiegle, Charles Osborne and others." The House arrested and fined some of these and sent the Provost off to gaol, "the Newgate or common Gaol of the . . . County, the place for Thieves, Murderers and Felons, as well as Debtors, there to be detained until further orders from the House"—surely an "Ignominy for . . . a Clergyman of the Church of England, who" was "placed at the Head of a Seminary of Learning . . . and engaged in sundry other publick undertakings."

Being committed, January 25, Mr. Smith applied, February 4, to Chief Justice William Allen for a Writ of *Habeas Corpus*. The Chief Justice finding that the Warrant of Commitment, behind which he could not legally go, read "for a Breach of Privilege," had no alternative but to dismiss the application. Consequently, the Sheriff was not called upon to decide whether he should obey the order of the House, that "he do not obey any Writ of *Habeas Corpus* or other
Writ whatsoever, that may come to his hands for Bail-
ing or discharging the said William Smith or otherwise discharging him from his Custody on any pretence whatsoever. . .” Then the prisoner appealed to Gov-
ernor Denny. The Governor was deeply sympathetic, but to exercise the only power he had in the premises—and the existence of that power had been denied—and dissolve the House, he thought unwise. Of course, the power of a British Legislature to imprison continues only so long as it is in session, but to endeavor to exer-
cise the disputed power of dissolving the House, the Governor thought “might at this critical Juncture en-
danger the safety of the whole Province.” The Seven Years’ War was going on and all the help that Penn-
sylvania could give, was badly needed: it was no time for intestinal strife.

The House adjourned, April 8, 1758, whereupon the Warrant of Commitment became effete and the Provost and Moore were released by order of the Supreme Court, April 11. The House met again late in April and new Warrants were issued, but for some reason they were not executed. One would be tempted to say that the Members of the House had become ashamed of their conduct but for the fact that when after its adjournment, May 3, the Assembly met again, September 4, Warrants were again issued and the prisoners arrested and kept in gaol until the House was dis-
solved, September 28, when the Warrants became void and they were set free. The new House met, October 14, when new Warrants were issued, but apparently not executed.

During his freedom, Mr. Smith had, June 3, 1758, married Miss Rebecca Moore, daughter of his fellow sufferer.

His carefully prepared Appeal to the King-in-Coun-
cil had gone on to England. It was, April 1, referred by the Privy Council to the Lords of the Committee of
Council for Plantation Affairs. The Lords of that Committee seeing that questions of law were involved, referred the case, April 10, to the Law Officers of the Crown—Attorney-General Sir Charles Pratt (afterwards Lord Camden, Chief Justice and Lord Chancellor), and Solicitor-General Sir Charles Yorke (the son of a Lord Chancellor, and whose unhappy end is one of the tragedies of the Bar).

Mr. Smith with "something of the prestige of a political martyr, leaving Mr. Moore a prisoner in his own house," sailed to England to prosecute his Appeal, arriving in London, New Year's Day, 1759. In England he received, March 27, 1759, the Honorary Degree of Doctor of Divinity from Oxford; and, March 10, his Alma Mater of Aberdeen gave him the same Degree.

His Appeal was lagging, but Dr. Smith's urgent solicitation of the Attorney-General was effective. The Law Officers took up the case, heard Counsel on both sides and reported to the Lords of the Committee of Council for Plantation Affairs on June 26, 1759, that they were of opinion that the Address was a Libel, the publication of which could have been punished had it been published whilst the Assembly was sitting which it had aspersed—"They would have had a right to have punished the Authors & publishers thereof, the same being a manifest Contempt. But after that Assembly was dissolved, that kind of Jurisdiction ceased, and the subsequent Assembly had no right to take up the Consideration of this offence as a Contempt to themselves who were not then in being and consequently could not be aimed at, described or calumniated by a Libel published before their Election."

NOTES.

It seems proper, both from the intrinsic interest of the subject and from the propriety of completing the present narrative, to give a somewhat full account of previous Impeachment proceedings. The episode
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of Lieutenant-Governor John Evans was much like that of Lieutenant-Governor Denny. It is told in considerable detail in Volume II of the Minutes of the Provincial Council of Pennsylvania, published by the State, Philadelphia, 1852. William Penn, the sole “true and absolute” Proprietary, sat for the last time in Council, October 28, 1701 and signed the Charter of Privileges of the Province, and the Charter for the City of Philadelphia. For a time, Andrew Hamilton was Lieutenant-Governor, in whose absence the senior Councillor, Edward Shippen presided, Hamilton not appearing after November 20, 1702. Then John Evans arrived in Philadelphia, February 2, 1704, with a Commission from Penn dated July 11, approved by Her Majesty Queen Anne in Council, July 30, 1703, appointing him Lieutenant-Governor—2 Acts, p. 802. For a time he got along fairly well with the Assembly; but conflict was inevitable where he represented Penn and his interests and the Assembly represented the people of the Province and their interests. Among other things, we find him in the summer of 1705 prosecuting to conviction for libel, William Biles, a Member of the House; but when he asked the House to purge itself of the contagion of the said pernicious member by expelling him, the House told him plainly that “ye manner of said proceedings against William has been very offensive to this House” and that Sheriff and Justices “have . . . Committed a manifest Breach of Privilege against this House;” and they added “We do not find the Grounds of this Message (Especially Considering ye methods that have taken place) to be sufficient to Induce us to Expell the said William Biles from this House.” When this Address was read in Council “and the Rudeness as well as the absurdity of its Contents Considered, It was the unanimous opinion of the Board that it would be to no purpose to spend any Longer time Conferring with the present House,” and the Assembly was forthwith dismissed “till the Country might have an opportunity of a new Choice.”

In 1706, 7, James Logan, long Receiver General of the Province and Provincial Secretary, who had become a Member of the Council, February 9, 1704, came under the disapprobation of the House, who resolved to impeach him. I do not go into the charges; of some, he was certainly innocent, the others arose from the irreconcilable views of Penn and most of the people; and Logan was Penn’s man, faithful to his master. At a Meeting, March 4, 1707, the Governor laid before the Council, a paper he had received from the Assembly—“Articles of Impeachment exhibited by the freemen of the Province Pennsylvania in this present Assembly mett, in their own name and in ye name of all ye freemen of the said Province agst. James Logan, Secry. of the same Province of high Crimes, misdemeanors & offences”—the Paper concluded: “Resolved That the said James Logan be Impeached upon the said articles. Signed by order of the House, the 25th of febry. 1706-7. David Lloyd, Speaker.”

The actual year was, New Style, 1707, as the year then began in March, according to the Old Style. The Council thought from the form, that it was not an Impeachment but “There must be something further
intended by the House to make it an Impeachment; but whatever the intention, the House should be called on to prosecute without delay," that "speedy Justice may be done either to the Countrey or Secry." Logan, who was present as a Member of the Council, stated his case and returned "the Board his hearty thanks for their Resolution to press the House to bring on a Trial." The Secretary was directed to draw up his Answers to the Articles of Impeachment and send "ym to ye Proprietor in London."

March 19, the Governor in a Message to the House said: "The impeachment of the Secry. the House is desired to prosecute & agree upon a time for it without delay." May 8, several Members of the House appeared before the Governor to charge the Secretary according to the Articles of Impeachment, and desired that he might be ordered to give his answer in writing. He asked that Clerks should be at the hearing to take the proofs and answers in writing—this was agreed to, and "the 2d day (Monday) next, the 12th Instant at 10 in the morning" was fixed, "a Convenient place to be sought in the meantime." On that 2nd day, the Council met "at the usual place, the Secrys. office, and then adjourned to Wm. Clark's House being prepared for the purpose"—the House was notified, and asked for an adjournment till the afternoon at 3 o'clock.

When the Council met at 2 p. m., on motion of an unnamed Member, the question of the right of the Governor "to receive any accusations from the House under the Title of Impeachments to be prosecuted before him as Judge thereof" was considered and the unanimous opinion was "that the Governor cannot be safe in sitting as Judge upon any Impeachments in a Parliamentary way." When, later on, the House, headed by David Lloyd their Speaker, attended, the Governor told them that there was reason to question authority to proceed upon Impeachment in Pennsylvania, "since there is no middle state in it resembling the House of Lords in England." This seems to be the first time the "Middle State," of which so much was made in the Denny-Moore controversy, was publicly spoken of. The Speaker said that while there was no middle state, the Assembly by the Charter had the power to impeach and in this he was backed up by the Members present; one Member instancing the Impeachment of President Moore "in the minority of the Province," "not long after the settlement of it," although none had taken place under the existing Constitution.

However, the Secretary, being called on for his answers, said that it was absolutely impossible for him to plead to these Articles, for some of the charges were "so unaccountable and inconsistent" he could not understand them, and he asked to have them explained. The Speaker said he would have to put in a written answer to each article; and the Secretary said that it was impossible.

The articles were read; some were explained, and after considerable discussion and recrimination, the Council adjourned till the morrow.

On the morrow, the Speaker produced Resolutions that they had the right to impeach "& the Govr. to Judge of such Impeachments;" that
the Council “ought not to sett with the Govr. Judicially upon such Impeachments;” that the Secretary ought to plead in writing to each article; and that then they would proceed to prove their Charges, “provided that the Govr. will proceed to judgment thereupon.”

The Governor and Council thought it was not safe for him to do so; but the Governor would hear what could be exhibited against the Secretary “in such a method as is proper to this Board.” The House, naturally enough were incensed, and on May 15 “felt obliged to acquaint the Governor That it would have been more Candid if he was really of opinion yt the Constitution of this Government was Defective and would not warrant him to sitt Judicially upon Impeachments; To have signified that at first and not Tell us from time to time that he would try the Secry. upon the Articles exhibited by this House, which put the Complainants to the Trouble of Getting proofs in readiness for trial, at the time and place appointed by the Governor for the purpose . . .” All of which would be wholly justified if the Governor had been of that opinion from the beginning; but the fact seems to be that the Council had no doubt on the subject till it was suggested aliunde. If I may be allowed a conjecture, I would hazard a guess that the suggestion came from Roger Mompesson, who, being then “Judge of ye admty & Counsellor at Law was called to the Board & took ye oath of a member of Council,” on “febr ye 4th, 1704;” on “febr 8th,” he “took ye Oaths of allegiance to ye Queen, the abjuration of ye Pope’s Supremacy & ye Test & subscribed them,” and thereafter took a very active part in the Council for a time, but ceased to attend after May 3—he was appointed Chief Justice “of this Province & the Lower Counties,” April 17, 1706. He had not been active after August 24, 1704. It is known that his advice was asked from time to time, and I venture to conjecture that he suggested the doubt to the Councillor, John Guest, who was a Judge of the County Court of Philadelphia and the most active member of the Council. In any case, Chief Justice Roger Mompesson seems to have been “the Judge famous for his Integrity and his abilities in the Law,” who in Governor Denny’s Message of January 24, 1758, is said to have supported Governor Evans in his opinion.

However that may be, after Logan had presented a Petition to Council urging a speedy hearing, a Message was sent to the House declining to hear an Impeachment, but offering to hear any proofs against the Secretary and make use of all the power the Governor had to “do Justice to the Injured, beyond which no reasonable man can expect he should proceed.” The House now contended that the Governor might in a certain sense “be deemed to supply a middle state, Resembling (though in an Inferiour Degree) That of the Lords upon Impeachments . . .” Then they adjourned for three weeks and the matter dropped for a time. See 2 Minutes, pp. 54, 56, 117, 118, 158, 200, 201, 239, 344, 347, 353, 360, 364, 365, 372, 373, 375, sqq.

The complaints were renewed in 1709, but nothing came of them: op. cit., pp. 500-502, 507—although the Assembly threatened to commit Logan to the Common Gaol, the Sheriff being forbidden by Governor Gookin to molest him: do. do., p. 508.
The sins charged against Evans seem to reduce down to two, according to the representations of the Assembly to his successor, Charles Gookin, March 9, 1709—namely, first, that in May, 1706, he “shott at the Queen’s Subjects putting many of ye Inhabitants of this Town in Danger of their Lives, and forced great Quantities of Powder & lead from ye owners and gave it to such as wasted it . . . ;” next “That Notorious Act of Hostility he Committed by firing Shott at the Queen’s subjects passing by New Castle on this River upon their Lawfull Trade to and from this Port.” *op. cit.*, p. 433. The Assembly say: “We mencon these as they are in our opinion offences of a Deep Dye and Committed agst. the Queen’s Crown & Dignity, As well as agst. the Peace, &c., and ought to be charged upon him before he Departs this Province,” *do. do.*, p. 433, *sqq.*

In May, 1706, the Governor of Maryland wrote to Evans that French Privateers were chasing ships “Nwd. of Virginia Capes”—the Council decided to issue a Proclamation requiring all who had “arms to fitt them and put them in order and such as have not to furnish themselves without delay with fire arms and ammunition”—and four persons were named to “go to every house in Philada & fully examine, search & take an acct. in Writing of what arms & ammunitions every person has in their possession, & in what order & condition they are; also that a general Muster be forthwith Ordered throughout the province.” This was ordered “by the Govr. and such whose profession allows to use arms,” not the Quakers; *do. do.*, pp. 240, 241. At a meeting of the Council, June 1, 1706, “All those members not Called Quakers seem’d of opinion that it was incumbent on the Governour to call the Assembly together with all speed in order to provide for the safety of the Place.” The Quakers opposed this, and nothing was decided on: *do. do.*, pp. 243, 244. The alarm passed, but in the meantime the Governor had fired on Colonial vessels by mistake. Evans replied to the accusations of the Assembly and for some time the bickering continued, but nothing came of it all. See *op. cit.*, pp. 436, 7, 443, 453, 464, *sqq.*

One can hardly blame Evans for his conduct in an apparent emergency.

As a matter of curiosity, the following may be related of him. As Lieutenant-Governor, he issued a Marriage License to Thomas ffrench, which contained a Bond by Thomas ffrench and William Howston to Evans of £200, conditioned to be void if the said Thomas ffrench was married according to the method used in the Church of England. He got married by a Presbyterian Minister by the Presbyterian method, and so the Bond became absolute. Evans sued Howston and got judgment: Howston could not pay and he was gaoled on a *Ca. sa.*. His brother, Anthony Howston, sent a petition to William Penn in England; and Penn, April 20, 1709, gave an Order under his hand and seal to Lieutenant-Governor Charles Gookin for the release of Howston from debt and custody. This was communicated to Evans and, presumably, Howston was discharged: *op. cit.*, 494, 495.

The Impeachment referred as having been tried in “the Minority of the Province” may be read in Vol. I of the Minutes, pp. 135, *sqq.*
At a meeting of the Members of the Council, May 15, 1685, Thomas Lloyd, President, in the Chair, in the afternoon, "Two of the Members of the Assembly attended" with a "Declaration of the freemen in Assembly against Nich. Moore, one of their Members that he should be removed from all his Offices of Trust and Power . . ."

"Nich." seems to have been a somewhat headstrong man, though of considerable ability and influence. At the second Meeting of the Council, "the 12th of ye 1st Mo. 1683," (March 12, 1683), the Council was informed by several of the Members "That Nicholas Moore President to ye Society of free Traders in this Province took occasion in company in a public house to utter those words agt the Proceeding's of the Governr, Provll Council & Assembly as that this day they have broken the Charter & therefore that all you do will come to Nothing & that hundreds in England will curse you for what you have done & their children after them and that you may hereafter be Impeacht for Treason for what you do. Whereupon, the Governor and Council did order that Nicholas Moore should appeare before them. He accordingly did appeare, & being charg'd with such Discourse, said that he spoke rather by Query than assertion, and if he said as it was represented he had been too blame indeed but he said that he spake not with such Intent; however, his Discourse being unreasonable and imprudent, he was exhorted to prevent the like for the future." do. do., pp. 58, 59.

It seems not unlikely that in this "publick house," he had taken an unreasonable and imprudent amount of that beer which by order of the Governor and Council was sold at a penny a quart.

We find him, March 16, writing Penn that the laws against immorality should not extend to servants, as the penalty would fall on the master. It is to be presumed that he would have been satisfied with that subsequently provided for negroes, male or female, caught "gadding about on the first day." These Sabbath breakers were to be kept in gaol all night without food and receive 39 lashes on the bare back well laid on. May 2, 1683, Nich. Moore was chosen by Penn to be Secretary of the Council. do. do., p. 73. He seems to have been a competent Secretary but with considerable orthographic eccentricity, pardonable in that pre-Johnsonian period. In May, 1684, it was decided to establish "a Provll Court Consisting of five Judges, to Try all Criminalls & Titles of Land and to be a Court of Equity, to deside all Differences upon appeals from the County Courts." do. do., p. 102. This was "past . . . Nemine Contradicente," all present saying "yee."

September 12, 1684, "The Commission of ye five Provll Judges was this day delivered unto Nicholas Moore & Robert Turner, who were accordingly attested," the other three being Wm. Welch, Wm. Wood and Robert Eckley—the Commission being for two years and dated "ye fourth of ye sixth Month, One thousand six hundred eighty & four, being ye thirty sixth of ye King's Reign & ye fourth of my Governmt." do. do., pp. 119, 120, 121. Moore was President of the Court and "Prior Judge," when Welch died, August, 1684. do. do., p. 119.

Notwithstanding his judicial position, he was attorney for "Widdow
Acrod” whose husband, Benjamin Acrod, had, according to the Coroner’s Jury, “killed himselfe with drinke,” and therefore his estate might be estreated. Penn had, however, “Relinquished all his Claim thereunto in Council”—do. do., pp. 94, 129—Moore was also elected a member of the House of Assembly—do. do., p. 135.

The Articles of Impeachment, eleven in number, having been “presented, May 15th, 1685, to ye President and Provll Councill in ye Council Chamber by the Speaker (John White) & Members of the Assembly,” four of the Councillors were deputed “to acquaint Judg Moore how ye Declaration aforementioned was presented” and request his attendance on the morrow “by the Seaventh hour.”

May 16, “the Speaker and Assembly againe” attended; Judge Moore did not, and an adjournment was had till the 18th, when the Speaker and Assembly “attended . . . to make good their Allegations against Nich: Moore.” But they had another grievance—there was a gentleman, one Pat. Robinson, already of some prominence, but to become of much greater importance after the resumption in 1692 of Pennsylvania into the Royal hands, when he became a Councillor and Provincial Secretary. He was, however, already in the confidence of the Council. He had been entrusted with the administration of Benjamin Acrod’s estate, the collection of rates, &c, and was Clerk of the County Court of Philadelphia, as well as Deputy master of the Rolls: do. do., pp. 129, 138, 152, 191, 192, 365, sqq. William Penn had gone to England the year before, and Thomas Lloyd the first President was still in office. When Lloyd and sixteen Councillors met on the morning of May 18, “the Speaker, with ye Assembly, attended this board & Declared that they were abused by Pat. Robinson who said you have drawn up an Impeachment against Prest Moore at hab nab for which they desire satisfaction.” The President and Council wholly disapproved of the language, “wch Expressions of his wee doe unanimously declare to be undecent, unallowable & to be disowned.”

In the afternoon, the Trial of the Impeachment began before President Lloyd and Council, the Managers for the House being the Speaker, Abram. Man, Tho. Usher, Jno. Blunstone, Wm. Berry & Samll Gray. The evidence on the first three Articles was put in and an adjournment had till the next day when the evidence on the remaining Articles was adduced.

Moore had not been present and the Council ordered “that Express notice shall be given with all dispatch . . . to him to signifie the sence of this board and that he make his appearance before ye Presidt and Provll Councill in the Council Chamber at three of ye clock this afternoone, being the 19 Instant.” He did not obey, but went on with his judicial duties until the Council, June 2, sent him a peremptory order “by the Clark of ye Councill that he Desist & cease from further Acting in any Place of Authority or Judicature, till the Articles of Impeachment Exhibited against him by the Assembly be Tried or satisfaction be made to this board.” do. do., pp. 135-142. Nothing more was done. The Council in the absence in New York of Lloyd elected a
new President, pro tem, Thomas Holmes, and, with him in the Chair, were, July 28, considering another matter when “Immediately Stepd in Abraham Man & John Blunstone” (who, it will be remembered were two of the “Managers for the Commons”). Abraham Man began thus: “Wee are come in ye name of ye free people to know whether you have forgott yourselves in not bringing Judg Moore to a Tryall. The Secretary asked him for his Petition. Abraham Man made answer that they did not look upon themselves obliged to come by way of Petition, considering whom they Represent. After some Sharpe repremands, from ye Councill, they withdrew . . . ” O si sic omnia, when mere Commoners come before a Superior Body with such troublesome questions!

But, July 29, “John Blunston & George Maris Came to renew their former desire in behalfe of ye Assembly, yt Patrick Robinson might be removed out of his Publique Offices, and that ye Tryall of Nich. Moore might not be delayed. The Councill answered that as soone as Presidt. Lloyd, was come from New York (who is Expected the next week) they would give them an answer, but at Present Could not. In regard, Patrick Robinson was his (i. e., Lloyd’s) Deputy in ye Office of Mr. of ye Rolls.” It should be said that, May 19, “The Assembly presented a Petition to displace Patrick Robinson from any office of Trust & Profit, which Petition was Read & shall be weightily considered and answered.” June 2, the Council had considered the Petition and had concluded that he could not be removed “from his Clarke’s places or Office till he is Legally Convicted of Ill Fame and those crimes & Misdemeanors alleged against him . . . by John White (the Speaker) in behalfe of the Assembly; and after such conviction, it is resolved that he shall be readily Dismist from any Publick Office of Trust in this Government.” In other words, the Council before removing him from his Clerkship, required better evidence of misconduct than the say-so of the House; and, of course, the Council had no power in respect of the Deputy Mastership of the Rolls held under Lloyd. do. do., pp. 141, 142, 152.

Next week came and several more, but not President Lloyd; and September 16, the Council gave an answer: “That Nich. Moore being at this Time under a Week and Languishing Condition, and not under promising hopes of a Speedy Recovery, so that at present They Cannot give any Certaine or definitive answer.” do. do., p. 153. Nothing more is heard of the Impeachment of Nicholas Moore. The Articles of Impeachment charge misconduct in his capacity of Judge.

The first is trifling, an irregular issue of a Writ for holding a Court at New Castle—apparently a simple mistake.

The second for excluding a man, James Reads, from a Jury.

The third is in essence for refusing to accept a verdict of a Jury which he considered against the evidence and sending the Jury back to reconsider—a wholly proper act in English law and one I have done more than once—non horresco referens. It may not be without significance that Abraham Man was Plaintiff, that the Jury first found a
Verdict of £8 for him, but being sent back to reconsider they found for the Defendant.

The fourth was "not so Intelligably worded" that the Council could understand it—or can I—and "ye Assembly requested . . . that a further Explanter Sense might be admitted." No evidence was offered.

The fifth was that two persons in New Castle were charged in a civil action of Trover, but Moore, *suo sponte*, gave "Judgmt of felony, Comending the Defendant to be Publickly Whipt & Each to be fined to pay three fould." This would be an extraordinary abuse, if true; but the only evidence adduced wholly fails to support the charge. All the Managers can say is that "ye proof of the Intended Indictmt was false"—I do not pretend to understand this.

The sixth charged bullying a witness and having him convicted of perjury.

The seventh charged Moore with saying that the Judgments of preceding Judges were wrong "thereby Distracting ye People betwixt divers and Contrary Judgmts and perpetuating Endless & Vexatious Suits." Well! !

The eighth charges that sitting at Chester he "did reverse and Imp rendered the Judgmt of ye Justices of ye . . . County Court and publicly affronting the members thereof, although the matter came not regularly before the said Circular Court, thereby drawing the Magistrates into the Contempt of ye people and Weakening their hands in the administration of Justice." It appears that John Blunstone, George Maries and Thomas Usher, (note these names, we have met them before), Justices of the Peace for Chester sitting as Judges of the County Court gave Judgment in two certain suits for the Plaintiffs, and Moore on Appeal reversed the decisions. What are Courts of Appeal for?

The ninth charged Moore with neglecting . . . one Spring to hold a Circular Court in the two Lower Circuits. Apparently he claimed as Chief Judge the right to fix the time for the Circuit Courts.

The tenth imputing contempt of the President and Council seems to have been fairly proved. He called "the Memb. thereof foole & Logheads and said it were well if all the Laws had been Drapt and that it never would be good Times as Long as ye Quakers had the Administration." And yet—and yet—I seem to have heard just such language about the Republicans in the United States and the Liberals in Canada.

The eleventh Article is general and seeks Moore's removal from all places of Trust and power. Surely the real cause of this Impeachment is not far to seek. *do. do.*, pp. 135-142, 151, 153.

The Judge escaped by sickness; but Pat Robinson was alive and kicking. Lloyd came back from New York but nothing was done about him, and at last, the House became impatient. It was, indeed, a new House, but it carried on the feud of the old.

At an evening meeting, May 13, 1686, came four Members of the Assembly, George Maris being one, with a Message from the House, with a Request that "the Presidt and Provll Councill would be pleased to give their Reasons why ye Request of ye Late Assembly Concerning
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ye Removal of Patrick Robinson from all publick offices of Trust, was not according to promise, answered.” The Council next day hedged, although “the message . . . was in writing . . . the Council Declared it was not Proper nor Seasonable to be answered nor was it signed by any of ye Assembly.” But something had to be done; and, September 21, 1686, Robinson was allowed to “Remaine Three Months longer in his office of Clark,” he then to resign, and “further in ye meantime to behave himselfe Civily & Respectfully to ye Magistrates and peaceably to all persons, or for ye first offence Committed in yt nature to have his Commission forthwith Cancelled.” He broke out again, and, October 1, “Upon ye Judg’s Complaint . . . of ye Ill behaviour of Patrick Robinson in ye Provll Court, it is ordered yt he be dismissed of his Office of Clark of ye County Court of Philadelphia . . .” Some trouble was found in getting the Court Records and Papers from him, but this was at length accomplished and he disappears from the Record until he blooms out as Councillor and Secretary, April 26, 1693. do. do., pp. 138, 141, 142, 152, 153, 191, 192, 193, 365, sqq.

The choice is always open. There is ample authority either way. “Ne respondeas stulto juxta stultitiam suam, ne efficiaris ei similis,” or “Responde stulto juxta stultitiam suam, ne sibi sapiens esse videatur.” Prov. xxvi, 4, 5.

The reference is to a painful episode in Pennsylvania history—the official account is to be found in 6 Minutes. After the defeat of Braddock in July, 1755, all the western part of Pennsylvania suffered from Indian attacks of great ferocity. The Colony was undefended, and, when the Indians in the Fall of 1755 pressed through the passes of the Blue Mountains after the retreating Regulars, the savages had almost their own way. Braddock’s last despatch to Governor Morris was from his Camp at the last Crossing of the Yaugyaughani, June 30: 6 Minutes, pp. 4, 5, 476. The first news of his terrible defeat came to Morris in a letter from Governor Sharpe of Maryland of July 16: do. do., p. 477. His information came from Col. Innes; do. do., p. 478. July 16, the Governor Morris issued writs for the Sheriffs to summon the Members of the House for July 23: do. do., p. 479. The House met accordingly and the Governor next day sent a Message calling for immediate and vigorous measures for defence of the “peacefull Habitations. All . . . alike the objects of their Cruelty, Slaugterning the tender Infant and frighted Mother with equal Joy and Fierceness:” do. do., pp. 486, 487. The next day, he proposed to the Council to raise a sum of money. The Magistrates of Berks County on July 23 warned him against the Roman Catholics very numerous in that County, some of whom showed “great Joy at the bad News lately come from the Army.” “We Know,” the Magistrates said, “that the People of the Roman Catholic Church are bound by their Principles [vile Principles
as they say elsewhere] to be the worst Subjects and the Worst of Neighbours." It was "generally believed that 30 Indians are lurking, well armed with Guns and Swords or Cutlashes ... near ... a very magnificent Chappel ... of the Roman Catholics in Cussahoppen ... the Papists ... keep Arms in their Houses against which the Protestants are not prepared, who, therefore are subject to a Massacre whenever the Papists are ready;" do. do., p. 503.

Just at that time came the decision of the Privy Council, May 30, 1755, rejecting the application of the House against Governor Morris' rejection of their Bill for raising £20000 by Bills of Credit: do. do., pp. 505-510. Acts of the Privy Council of England, Colonial Series, London, The King's Printer, 1911, Vol. IV, p. 288, No. 269 (Referred to Committee, April 3; by them to Board of Trade, April 15; decision, May 30; copy delivered to Agent of Province and Agent of Proprietors, June 12; presented at Provincial Council, July 28.) The Address of the Assembly had gone over in the Fall of 1754. Mr. Partridge, agent for the Province, Mr. Paris for the Lieutenant-Governor, attended, as also the two Proprietaries, Thomas Penn and Richard Penn. The Assembly passed an Act for raising £50,000 by a tax of 12 d in the £ (i. e., 5%) on all Estates real and personal and a poll-tax of 20s per head. The Governor on his Instructions had to refuse his Assent as the taxation included the property of the Proprietaries. 6 Minutes, pp. 521, sqq. And there was a deadlock, the House insisting that in the grave emergency, it was but just that the Penns should help to defend their own lands and the Governor could only say Non possemus.

Soon came in urgent representations of the necessity for protection, e. g., from the Township of Lurgan, August 1: do. do., p. 533, and from Mr. Weiser, J. P., of Berks County: do. do., pp. 533, 534—but Governor and House kept up recrimination, each apparently trying to say the most irritating things of and to the other and neither trying for a via media.

The House met again, October 15, and soon the news became baleful. October 28, the Governor received news that "some Indians had actually begun Hostilities on the West side of the Susquehannah and had either killed or drove away all the Inhabitants settled in the upper part of Cumberland County at a place called John Penn's Creek:" do. do., p. 645—October 4, from Patterson's Creek and about the Fort, "there is forty killed and taken and ... one whole family ... burnt to death in an house. The Indians destroy all before them, firing houses, Barns, Stockyards and everything that will burn:" do. do., p. 641. They burned "two and forty on Patterson's Creek ... and since they have killed more and keep on killing, the woods is alive with them ... ": do. do., p. 642. October 10, "The Indians (Shawnees and Delawares) were continuing their ravages on the South Branch": do. do., p. 643. October 11, "Near 100 persons have been murdered or carried away Prisoner by these Barbarians, who have burnt the Houses and ravaged all the Plantations": do. do., pp. 613, 614. October 2—, "two persons ... murdered and scalped": do. do., p. 645. Those living near the
Mouth of Penn's Creek petition the Governor, October 20, telling of the terrible Indian Raid on the 16th October when they "came down upon the said Creek and Killed, Scalped & carried away ... all the Men, Women & Children ... 25 Persons in number ...": *do. do.*, p. 647.

The Governor appealed for help to Governor Dinwiddie of Virginia and the Governors of Maryland, Jersey and New York, October 29: *do. do.*, pp. 651, 652. Worse news continued to come from all the West of the hostilities; and, November 3, the Governor again appealed to the House—"I have neither Money, Arms or Ammunition at my disposal ... The cruel and bloody Disposition of the Indians is known to all and has been unhappily felt by two many of the Inhabitants ... I am ready and willing to consent to a Law for emitting any sum in Paper Money the present ... may require ... sinking the same in Five Years ...": *do. do.*, pp. 670–672. November 5, the House answers that "it requires great Care and Judgment in conducting our Indian Affairs at this critical Juncture," and asks the Governor "whether he has any Knowledge of the Inclinations of the Six Nations, &c., &c." No wonder, "the Council was unanimously of opinion that ... the Assembly did not intend to provide for the Defence & Security of the Province ...": *do. do.*, p. 678. But, November 6, the House offers to pass a Bill for raising Money by Taxes on Real Estate, "but it had included the Proprietaries' Estate and all the Council "were of opinion that the Governor could not give his consent to such a Bill": *do. do.*, p. 680. "The inhabitants from all the parts of the Province, interior as well as Frontier Counties, petitioned the Governor & Assembly by separate Petitions that they would forthwith concur in enacting Laws as well for a Militia as for the Immediate defence of the Province, City and the Security of their Trade and Navigation:" *do. do.*, p. 680. The Governor tried to borrow £1000 from the Proprietaries' Receiver General to purchase Arms and Ammunition; but Mr. Hockley said he had not even £100. Another Bill for raising £60,000 was passed by the House and with the same provisions. The Governor refused to sign it, November 11, 12: *do. do.*, pp. 696, 702, 3. The Indians "passed the Blue Mountains, broke into the County of Berks and were there committing Murder, Devastations and other kind of Horrid Mischiefs ..." The people were exclaiming against the Quakers, but Governor and House kept jangling: *do. do.*, pp. 705, sqq. Then it was that Moore and others sent in the Petition he speaks as the beginning of the feeling of the Assembly against him. A Money Bill was passed whereby the Proprietaries' Estates were exempt, they to pay £5000, November 25, 26: *do. do.*, pp. 735–742. Whatever may be thought of the Assembly, no one can acquit the Penns of gross selfishness and lack of consideration. We are told that, during this crisis, "Troops of frontiersmen rode through the city threateningly brandishing their weapons. A party of Germans laid corpses of their countrymen scalped within 65 miles of the Capital at the door of the State House." *The Americana*, Vol. XV, *sub voc.* "Pennsylvania." The town of Gnadenhutten was later destroyed and the Indians kept their headquarters on
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the Borders of Northampton and Berks Counties: 6 Minutes, pp. 772, 773.

The Representation of Citizens to the Assembly, November 12, 1755, signed by William Plumstead, Mayor, and 133 others will be found in Vol. IV of Votes of Assembly, p. 502; Vol. II of Pennsylvania Archives, Philadelphia, 1853, pp. 485, 486: see also Vol. VI of Colonial Records (Minutes), p. 729.

It is called "A Representation to the General Assembly of the Province of Pennsylvania, by some of the Principal Inhabitants of the City of Philadelphia, in the said Province."

It is a very strong document beginning:

"At a time when a bold and barbarous Enemy has advanced within about a hundred miles of our Metropolis, carrying Murder and Desolation along with them; and when we see the Country already stained with the Blood of many of its Inhabitants, and upwards of a Thousand Families who lately enjoyed Peace and Comfort in their own Habitations, now dispersed over the Province, many of them in the most miserable and starving Condition exposed to all the Hardships & Severity of the Season . . . we should think ourselves greatly wanting in regard for our own personal Safety as well as in Compassion for our bleeding and suffering Fellow-subjects if we did not thus publickly join our Names to the Number of those who are requesting you to pass a Law in Order to put the Province in a Posture of Defence & put a Stop to those Savage Outrages which must otherwise soon prove our Ruin"—it makes not a request as "of humble Suitors, praying for the Defence of our Lives and Properties as a Matter of Grace & Favour," but "a positive and immediate Demand of it as a matter of perfect & unalienable Right . . . both by the Laws of God & Man."

"We conceive it a Subversion of the very End of Government to deny that legal Protection to the Governed for obtaining of which Government was originally instituted." The dilatory measures of the Assembly are condemned and the Remonstrance concludes by another "Demand" that the Assembly "immediately frame and offer a Law for the Defence of the Province in such a Manner as The present Exigency requires . . . ."

This seems to have been the Petition which Moore refers to.

See also a Remonstrance from the Mayor, Aldermen and Council of Philadelphia, 6 Minutes, p. 734, and the Governor's Letter, do. do., p. 710: 4 Votes of Assembly, p. 519.

The Address of some of the Quakers to the Assembly in the same month, November, 1755, protested that while it was right, "due Care may be taken and proper Funds provided for Raising Money to cultivate Our Friendship with Our Indian Neighbors and to support Such of Our Fellow-subjects Who are or may be in Distress And for such other like Benevolent purposes, Yet as the raising sums of Money & putting them in the Hands of Committees who may Apply them to Purposes inconsistent with the Peaceful Testimony We profess and have born to the World, appears to Us in its Consequences to be Destructive of
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Our Religious Liberties." They would suffer "rather than Consent . . . thereto by the payment of a Tax for such Purposes . . . and We Trust We may Continue humbly to confide in the Protection of that Almighty power whose Providence has heretofore been as Walls and Bulwarks round about us."

"Benjamin Franklin was said to have been a partner of Hall's in this enterprise; but he was absent from the Province at this time and was not connected with this publication. Franklin left for England as Agent for Pennsylvania, June, 1757, not to return till 1775.


"He is the gentleman meant in The Works of Benjamin Franklin, Longman, Hurst, Rees & Orme, London, n. d., Vol. I, p. 119—"a gentleman, who had at that time published the idea of a college, suited to the circumstances of a new country . . . a copy of which having been sent to Dr. Franklin for his opinion, gave rise to that correspondence which terminated about a year afterwards in erecting the college upon the foundation of the academy, and establishing that gentleman at the head of both where he still continues, after a period of thirty six years, to preside with distinguished reputation." Of course, he became the first Provost of the University of Pennsylvania. Some of Franklin's letters to Dr. Smith appear in the volume quoted from at pp. 120–124.

"See Life, &c., pp. 40, sqq.

"Notwithstanding his strong assertion of innocence of all but having the Address translated and printed in the German Paper after finding it printed in the Gazette and Journal—which assertion may have been but a plea of Not Guilty—it appears from the findings of the Law officers of the Crown after hearing all parties, that he "was concerned in advising a certain paper, intitled 'An humble Address of William Moore one of the Justices of the Peace for the County of Chester' . . . to be printed and published in the Pensilvania Gazette . . ." 8 Minutes, pp. 441, 442. Not mentioned in Life, &c., but see Acts, Volume IV, pp. 379, 380, No. 351. The spelling "Pensilvania" is consistently maintained in the Privy Council Records.

"The facts that the Provost took a deep interest in the Germans and that the Germans were among the worst sufferers, suggest joint action by him and Moore: The circumstance of their "happening" to be together in the Coffee House goes to confirm the supposition. Life, &c., p. 173.

"Life, &c., p. 173. 2 Coke's Institutes, p. 228. Speaking of the Action of Scandalum Magnatum (now obsolete, although one was brought in Upper Canada a little more than a century ago by Mr. Justice Thorpe), Coke says "yet shall they have no action de scandalis magnat," neither at the Common Law . . . for . . . the using of these
Libel on the Assembly.

words... for the necessary commencement or prosecution of his action...

... for it is a maxim in law, Que home ne ferra puny pur suer des briefes en court le roy, soit il a droit ou a tort..." (that no man will be punished for suing out writs in the King's Court whether he is right or wrong). This, indeed, would excuse the address to the Governor, but not its publication in the newspapers.

*Life, &c., p. 176.

*Before a House can proceed to a trial in such a case at all, it must declare the offending conduct, publication, &c., a Contempt; thereafter, during the conduct of the proceedings based upon such Resolution, no argument can be heard that the Resolution was wrong or should not be proceeded with. The "Wonderworking Parliament" or "Merciless Parliament" of 1388, 11 Richard II, did not stand for any nonsense. It enacted that everything done by that Parliament, judgments, impeachments, &c., &c., should be considered as rightly done "come chose facte duement," and "si ancune face pursue le denfreindre ou reverser des pointz susdutz quelle pursue soit de record & eit execution as a traitor and enemy of the King and Kingdom. As that Parliament hanged the Chief Justic Tresillian and banished other Judges and lawyers, it is not a favorite with the legal profession.

The resolution of the Wonderworking or Merciless Parliament confirming their own jurisdiction and complete control of their own proceedings is not in the regular volumes of the Statutes at Large, but will be found in vol. 10, Appendix, Ruffhead's edition. The celebrated John Selden in his *Tracts*, London, 1683, under the heading of "Janus Anglorum, The English Janus," p. 68, states it as follows. The statement is vigorous and reasonably accurate.

"In the Parliament holden by Richard of Bourdeaux which is said to have wrought Wonders, Upon the Impeachment of Alexander Nevil Arch-Bishop of Canterbury, Robert Vere Duke of Ireland, Michael Pole Earl of Suffolk, Thomas Duke of Gloucester, Richard Earl of Arundel, Thomas Beauchamp Earl of Warwick, and others, That they being intrusted with the management of the Kingdom, by soothing up the easie and youthful temper of the King did assist one another for their own private interest, more than the publick, well near to the ruine and overthrow of the Government itself; the Common Lawyers and Civilians are consulted with, about the form of drawing up the Charge; which they answer all as one man, was not agreeable to the rule of the Laws. But the Barons of Parliament reply, that they would be tyed up to no rules, nor be led by the punctilioes of the Roman Law, but would by their own authority pass judgment; pur ce qu la royalme d' Angleterre n'estoit devant ces heures, n'y à l' entent de nostre dit Seigneur le Roy & Seigneurs de Parlement unque ne ferra rules ne governes per la Loy Civil: that is, inasmuch as the Realm of England was not before
this time, nor in the intention of our said Lord the King and the Lords of Parliament ever shall be ruled or governed by the Civil Law. And hereupon the persons impleaded are sentenced to be banished.”

"Of Benjamin Chew, the Lieutenant Governor James Hamilton, at a Meeting of Council, Thursday, September 24, 1791, said—"Mr. Chew the Attorney General of this Province, acquainted the Governor that he has executed the said Office for more than Seven Years past, that the legal Fees arising from it were in no sort adequate to the time & Trouble required in executing the Duties thereof & were in many prosecutions never received, the Criminals being for their Extream Indigence unable to pay the same." Truly, "Quid est quod fuit; ipsum futurum est. Quid est quod factum est; ipsum quid faciendum est. Nihil sub sole novum"—and no one ever heard of an Attorney-General, seldom of an Attorney, who had adequate compensation. However, the Governor recommended the Assembly "to make him an allowance for his past Services as they think he deserves." 8 Minutes, pp. 666, 667.

7 See Note 41, ante.


9 Life, &c., pp. 174, sqq.

10 Life, &c., p. 187. The author of the Life does not appear to know that an imprisonment on order of a House of Commons can be legal so long only as the House sits. On prorogation, the imprisonment must cease; but it may be renewed by a new Warrant of the Speaker when the House meets again. When the House is dissolved, its power ceases. The author of Life, &c., p. 187 says that "When the House was dissolved ... he ... in some way, got free": This author does not seem to know that after dissolution the imprisonment would be illegal.


12 The author of the Life is not familiar with the Practice on Appeals to the Privy Council and consequently is not accurate in his account of the proceedings on this Appeal. From Acts, Vol. IV, pp. 375, sqq., it appears that the Petition was read in Council, April 1, 1758, and on that day referred to the Committee for Trade and Plantations, a Committee of the Council very often called "The Board of Trade" or "Lords of Trade," whose function it was to pass upon Colonial matters, a jurisdiction much wider than but including that of the present Judicial Committee of the Privy Council. The Lords of Trade, seeing that a legal point was involved, referred the matter for enquiry, consideration and report, to the Law Officers of the Crown, April 10, 1758. Both Attorney-General and Solicitor General were very busy men and did not take up the matter till next year and then only under great pressure. They then heard Counsel for Provost Smith and for the Assembly, and reported, June 26, 1759. The Lords of Trade concurred in the Report and Recommendations and sent them on to the Privy Council which sitting at the Council Chamber at Whitehall, the same day approved and the formal Order was made. 8 Minutes, pp. 438-446. Acts, Vol. IV, pp. 375, 385. Life, &c., p. 203, sqq. See the Provost’s dignified
and strong letter to the Attorney-General, April 30, 1759. Life, &c., pp. 203–205.


So far as I can discover, there has been only one instance in England of the House of Commons dealing with an offender itself, in any case in which the offence was not against the House or its Members; and this was in the nineteenth year of the reign of King James I, 1621.

Elizabeth, the only daughter of King James, had married the Prince Palatine Frederick, who became King of Bohemia; their Capital, Prague, had been taken and they obliged to flee. Edward Floyde, a lawyer of the Inner Temple, who had apparently been disbarred, who was a man of good estate and a Justice of the Peace for Salop, but was a prisoner in the Fleet, heard of this and spoke slightingly and jeeringly of the princely pair and their children “in most despiteful and scornful manner with a fleering and scoffing countenance and with a purpose to disgrace as much as in him lay, these two princes.”

He said: “Goodman Palsgrave and Goodwife Palsgrave have taken their heels and run away”—called the Palatine, “that poor lad,” and, “scoffingly and with great jollity, related a play of the princess running away with two children, the one under one arm and the other under the other arm with a third unborn and the Palsgrave following with the cradle”—and the like.

The House of Commons, being informed of these “false, malicious and despiteful speeches,” examined witnesses and, May 1, 1621, sentenced Floyde to a fine of £1000, to stand in the pillory and to ride from Westminster to the Exchange, then to the Fleet, then to Cheapside on a horse with his face to the tail holding the tail in his hand.

The House of Lords considered this a great infringement of the privileges of that house; and a Conference was held with the result that it was determined that the Proceedings in the Commons should not be drawn into a precedent, the punishment awarded by the Commons was not proceeded with and the House of Lords itself went into the case.

Poor Floyde, “late of Clandemayne within the County of Salop,” did not make much out of the change. He was sentenced to pay a fine of £5000, to be imprisoned for life in Newgate, to be incapable of bearing arms as a gentleman, to be infamous and incapable to be a witness, to ride in the fashion described from Westminster to Cheapside, there to stand in the pillory two hours and to be branded with the letter K in the forehead; also to be whipped at the cart’s tail from the Fleet to Westminster on the first day of Term. Some of the Lords objected to the whipping and some wanted Floyde’s ears to be nailed to the Pillory.

Every part of the sentence was executed except the whipping which was “suspended and forboren” at least for a time.


(To be continued.)