

Providence will avert the evil with which this Province is threatened. The Council were unanimously of opinion that the embargo was a measure of the most urgent necessity and the only probable means of preserving this Country from the miseries of impending famine.

NORTH CAROLINA—Ss.

By His Excellency Josiah Martin Esq. &c., &c.

A Proclamation

Whereas it hath been represented to me that the severe drought which hath prevailed in this Province for many months past hath greatly damaged and in many places totally destroyed the crops of Indian Corn now growing and if the exportation of Wheat, Rye and flour to the neighboring provinces which (according to my information) have suffered the same dreadful calamity is not speedily prevented the most alarming consequences may be felt by the inhabitants of this Province. I have therefore thought fit by and with the advice and consent of His Majesty's Council to issue this Proclamation hereby strictly enjoining and prohibiting the exportation of wheat rye or flour thereof from any port or place within this province to any of the neighboring provinces or parts beyond the seas for the space of three months next ensuing the date hereof of which His Majesty's officers of the Customs and all other persons are to take notice and govern themselves accordingly.

Given under my hand &c at Hillsborough.

JO. MARTIN.

[FROM MS. RECORDS IN OFFICE OF SECRETARY OF STATE.]

Letter from Richard Henderson to Richard Bennehan.

GRANVILLE, Aug<sup>t</sup> 29<sup>th</sup> 1772.

D<sup>r</sup> SIR,

Have not been able to see that little scoundrel, Will Potter yet, nor do I know where he is. The small pox, I understand is in a good way being mostly confined to those negroes over the River & not yet broke out among the rest. Col. Williams & myself will meet you on Tuesday Even<sup>g</sup> near the Nap of Reeds.

I am with the greatest Friendship D<sup>r</sup> Dick,

Your most Obed<sup>t</sup> Serv<sup>t</sup>

RICH<sup>d</sup> HENDERSON.

[B. P. R. O. AM. & W. IND.: NO CAROLINA. NO. 219.]

Letter from Governor Martin to Sec<sup>ry</sup> Hillsborough.

NORTH CAROLINA HILLSBOROUGH,

August 30<sup>th</sup> 1772.

MY LORD,

Since I had the honor of writing to your Lordship of my Intention to visit that part of this Province lying to the Westward of this Place I have made a Tour through the most broken difficult and rough Country I have ever seen as far as Salisbury in my circuit taking in the Moravian Settlements where I was irresistibly detained beyond my intention in admiration of the virtuous industry and perfect economy of that people who are notable examples to the supine and licentious inhabitants of this Colony who live in their neighbourhood and must I think sooner or later feel their Influence beneficially.

On my route My Lord I passed through the County of Guilford the residence of the principal Insurgents who had lately made their submissions to me. I received from them here the most pressing solicitations to be permitted to present themselves before me and after some debate with myself about the decency of compliance and considering that a refusal might to their ignorant minds imply apprehensions of personal violence or predetermined rigour I consented that they should meet me at an appointed place; they came accordingly before me bearing in their countenances every mark of truest contrition and penitence and after the most solemn protestation of their innocence and abhorrence of the design to subvert the Government of which they had been misled to crimes and violences they had never intended and for which they felt the severest remorse they declared their resolution to submit to the Royal Pleasure and implored my pity and good offices, I set before them in the strongest light I was able their criminality aggravated by their long forbearance to submit themselves to Justice I reprehended Hunter who was among them more particularly for his indecent defiance of a Court of Justice by appearing in the face of it while he stood in so criminal a state with any other design than to render himself to which he submissively replied that if he had offended by so doing it was innocently and ignorantly and that he heartily asked pardon for it. After exhorting them to deserve his Majesty's Mercy to which they

had now submitted themselves by future right good conduct and informing them that I should soon apprize them of the measures to be taken in consequence of their surrender I dismissed them and I must own to your Lordship with sentiments of pity and compassion I never should have felt if I had not seen them and made myself acquainted with their barbarous ignorance that really surpasses all description.

My progress through this Country My Lord hath opened my eyes exceedingly with respect to the commotions and discontents that have lately prevailed in it. I now see most clearly that they have been provoked by insolence and cruel advantages taken of the people's ignorance by mercenary tricking Attornies, Clerks and other little Officers who have practiced upon them every sort of rapine and extortion by which having brought upon themselves their just resentment they engaged Government in their defence by artful misrepresentations that the vengeance the wretched people in folly and madness aimed at their heads was directed against the constitution and by this stratagem they threw an odium upon the injured people that by degrees begat a prejudice which precluded a full discovery of their grievances thus My Lord as far as I am able to discern the resentment of Government was craftily worked up against the oppressed and the protection which the oppressors treacherously acquired where the injured and ignorant people expected to find it drove them to acts of desperation and confederated them in violences which as your Lordship knows induced bloodshed and I verily believe necessarily. Enquiries of this sort My Lord I am sensible are invidious nor would anything but a sense of duty have drawn from me these opinions of the principles of the past troubles of this Country.

Since I became acquainted with the Barbarism and profound ignorance of the wretched people of this Country I perceive all the resentment subsided which the representations of the people in general (stiling themselves the friends of Government) in spite of all my endeavours to hold myself impartial had wrought into my mind and my indignation is not only disarmed but converted to pity; nevertheless My Lord as I had been led by misrepresentations in the whole course of my correspondence with your Lordship to hold up the delinquents here to his Majesty as people against whom the proceedings at Law had been compleat and final and in a state depending solely on the Royal Pleasure I thought it my indispensable duty as

soon as I discovered my error and after receiving his Majesty's commands to propose to the Legislature an Act of Pardon and Oblivion which I might presume were given in that opinion to advise whether they could not be brought into that predicament wherein I had represented them I therefore summoned the Judges to attend here pursuant to my intention communicated to your Lordship by a former letter and on their arrival I proposed to their consideration the questions which together with their answers and the Attorney General's opinion I now have the honor to transmit to your Lordship. Another principle My Lord that engaged me in this enquiry was an opinion that if exceptions should be made in the act of grace to be proposed they would be impotent unless the criminals were in a state wherein the Royal Pleasure might operate effectually and conclusively against them. And further that it behoved me to guard against future omissions and irregularities in the proceedings at Law which might tend to restrain its Influence as well as more fully and clearly to understand the past erroneous transactions which had placed the offenders in a light so different to that in which they have been heretofore universally considered and represented by me.

From the several opinions I have now the honor to lay before your Lordship you will see that the Judges who have consented hitherto to the common error and deemed the prosecuted offenders here Outlaws think them no longer so and are doubtful as well about the possibility as the expediency of ascertaining or punishing their past crimes Wherefore My Lord it hath been determined with the advice of his Majesty's Council and the Judges that I shall signify to the people who have desired to surrender themselves that they will on their appearance be bound in recognizances to appear at the Superior Court from term to term to answer such matters as shall be brought against them at the suit of the Crown until his Majesty's Pleasure concerning them shall be finally declared the only measure it seems by which they can be kept in hold and which may at the same time I think have the effect of protecting their Neighbourhood from the injuries which have been committed in it since their return to their habitations and are by some supposed (although perhaps unjustly) to have been done by them. I do not apprehend that the Assembly will make other exceptions in the act of Grace than were made in the late Assembly's address to me and I confess my Lord I am of opinion none other will be necessary. The measure which his Majesty hath been pleased to authorize me

to propose will I am persuaded have the best tendency to harmonize the discord that has prevailed in this Country but cordial union can never take place until the victors forget to exult on the last years triumph at Alamance.

It is with concern My Lord that I find myself on this occasion obliged by my duty to His Majesty to bring before your Lordship a subject on which the Chief Justice and myself hold different opinions and on which I wish your Lordship's decision to obviate inconveniences and detriment that may hereafter arise to the King's service by division among His Majesty's servants or for want of their united endeavours or zealous cooperation.

Having summoned M<sup>r</sup> Chief Justice Howard to attend here with the other Judges to advise with me concerning the legality extent and effect of the past proceedings against the Insurgents and the further measures that it might be lawful and expedient to take with them I received from him an irresolute and indefinite answer whereupon I thought it my duty to enjoin his attendance indispensably at the time I had appointed for the other Judges and the Attorney General in consequence of which he complied after politely remonstrating "that in his Character of Chief Justice and in the Office and character of a Judge he did not hold himself subject to the direction of any person whatsoever the law alone being his rule, that his office is judicial not ministerial and that he cannot regularly be called upon to advise or give an opinion extrajudicially upon any business." I humbly apprehend My Lord that M<sup>r</sup> Howard is perfectly right with respect to the independance of his office if he would confine it to proceedings in his Court with which I am sensible no authority can rightfully interfere but he since explains himself more fully "that he is not bound to give an opinion upon any matter of Law off the Judgment Seat" which I confess appears to me an Independance not warranted as M<sup>r</sup> Howard asserts it is by the British Laws and constitution as it would seem to deprive His Majesty or any of His Delegates of the aid of the greatest Sages of the Law in Matters of all others the most important and nice nevertheless I can well conceive there may be points before a Judge in his Court unfit for him to decide upon extrajudicially; in the present case My Lord I apprehend M<sup>r</sup> Howard feels his official dignity here at least as much as its independance invaded by my preemptory injunction of his attendance at this place which happens however to be in the exact line of his duty the question therefore between us My Lord

I am desirous to submit to your Lordship's consideration I resolve into this viz<sup>t</sup> whether I may call upon the Chief Justice for advice or opinion in any matter of difficulty in law in virtue of the power I derive from His Majesty or not? I think it My Lord of no little consequence that this point should be clearly understood not only as I am equally unwilling to usurp an undue power as to make concession of a right of office improperly and more especially of so great moment as this appears to be, but that I may know precisely what helps I may expect in the discharge of my duty to the King. The Chief Justice confines me in matters of law to the Counsel of the Attorney General of which by various accidents I may be often deprived but I shall implicitly submit to your Lordship's arbitrament to which I have apprized M<sup>r</sup> Howard I should refer this matter that I would not suffer to become matter of dispute between us.

I have the honor to be &c

JO. MARTIN.

Copy of the Chief Justice's Opinion.

To HIS EXCELLENCY THE GOVERNOR,

I have considered the several questions proposed to me by your Excellency and submit the following answers.

To the first.

I know of no Insurgents in a state of *Outlawry* in the law sense of that word as far as I can recollect indictments were found against several persons at New Bern in March 1771, for Felonies and Trespasses committed at Hillsborough and proclamations were issued by the Court to compel their appearance upon pain of being adjudged guilty of the offences charged in the Indictments and also of being killed by any person whatever with Impunity but whether those proclamations were ever published or set up according to the directions of the Riot Act so as to effect the attainder intended by it, is a material point and cannot be ascertained but by a Tryal in the Courts of Law.

To the second.

This question is also upon a point that will most probably come before the Court whenever any one of the persons who have taken Arms against his Majesty's Government shall be tried for such offences I therefore conceive it to be improper for me to give my opinion upon this question till it shall come in judgment before me.