

THE GEORGIA HISTORICAL QUARTERLY



PUBLISHED BY THE
GEORGIA HISTORICAL SOCIETY,
SAVANNAH, GA.

VOL. 1—No. 2.

JUNE, 1917.

Printed for the Society
By
THE MORNING NEWS,
Savannah, Ga.

One Dollar a Number.

Three Dollars a Year.

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No. 2

JAMES MACKAY, OF STRATHY HALL, COMRADE IN ARMS OF GEORGE WASHINGTON.

BY WILLIAM HARDEN.

The purpose of this biographical sketch is to acquaint the reader with the truth in the history of one who, in his lifetime, acted a part of useful service to his fellow men; to the colony of Georgia when he took up arms under the leadership of the founder of this commonwealth; to Great Britain in her conflict with her enemy in what was known as the French and Indian War, where he came in close touch with "The Father of his Country;" to the same great English government later on when the colonies sought and gained their independence from that government; and who, notwithstanding all this, is almost unknown to the people of Georgia at the present time. Before taking up an account of his life, let us inquire into the history of his antecedents and learn something of the clan from which he descended.

From a book on "The Scottish Clans and Their Tartans," we glean this account of the Clan Mackay:

"This Clan is known to the 'seanachies' as 'Clan Mhorguinn,' or Clan Morgan. In the Book of Deer (eleventh century) the Clan Morgan and their 'toiseach,' or chief, granted lands to the Abby of Deer, Aberdeenshire, in the eleventh century. The Clan are also called 'Clan Aoidh,' the Lowland form is Mackie, and the Irish Magee. In Manx they are simply Kay. There are at least two clans Mackay, an Argyllshire and Sutherlandshire clan. The Argyllshire Mackays are to be found at an early date in Islay and Kintyre.

REV. J. J. ZUBLY'S APPEAL TO THE GRAND JURY.**OCT. 8, 1777.**

In reproducing this extraordinary document which we believe has never been given in full since it was first published as a broadside, we deem it advisable to state some preliminary facts.

Dr. Zubly came to America about 1758, after a short residence in South Carolina made his way to Savannah, and in 1760 became the pastor of the Independent Presbyterian Church. When the troubles preceding the American Revolution began he was an ardent patriot and espoused the cause of the American Colonies. He was a member of the Provincial Congress and took an active part in its proceedings. He was elected one of the members of the Continental Congress, and was placed on four important committees.

He addressed the inhabitants of Georgia on the State of the Country and we make the following extracts from that document. "It is with great sorrow we are to acquaint you that what our fears suggested, but our reason thought impossible, is actually come to pass. A civil war in America is begun".....

"You will permit us most earnestly to recommend to you a steady perseverance in the cause of Liberty, and that you will use all possible caution not to say or do anything unworthy of so glorious a cause; to promote frugality, peace, and order; and, in the practice of every social and religious duty, patiently to wait the return of that happy day when we may quietly sit under our vine and fig tree, and no man make us afraid."

Like the Rev. Jacob Duche, chaplain of the Continental Congress, he abandoned the cause of the Colonies and became an out and out espouser of the British cause. He made himself so obnoxious to the Colonists that he gave up his seat in Congress when his defection was revealed through his correspondence with Sir James Wright, and he returned to Savannah where he became active on the British side, and in 1777 he was banished from Georgia, and half of his estate was confiscated.

He then went to South Carolina where he remained until the Royal Government was re-established in South Georgia in 1779. He died in Savannah on the 23rd of July, 1781.

The paper which follows was written immediately after the act of confiscation was passed.

TO THE GRAND JURY OF THE COUNTY OF CHATHAM,
STATE OF GEORGIA.

Gentlemen :

On the point of being (unjustly as I conceive) banished from this Country, I think it a debt due to those whom I shall leave behind, to point out the very fatal precipice towards which this State is, I think, now verging, and which, in my opinion must soon complete the Ruin of the State, and of every individual. I cannot address myself to any one more properly than to you, who are of the Grand Inquest, and if things take their present natural course, will probably be the last Grand Jury that will have an opportunity to enquire into grievances, present them for redress and judge whether a man shall be put to the painful solemnity of a trial.

You must be convinced, gentlemen, that no grievance can more properly demand the attention of a Grand Jury, than that which strikes at the very root of its existence. That nothing can be more injurious to Freemen in a popular Government than to be declared SUBJECTS. That nothing can be more alarming, than the establishment of a power to take away liberty and property out of the usual and due course of law, by a power distinct from and in opposition to the only legal and constitutional judiciary department.

You must be convinced, gentlemen, that if the Constitution, by which a people are to be governed, may be altered, infringed, or taken away, or acted contrary against, at the pleasure of those who may chuse to do so, Constitutional Government is at an end.

If we must swear an Oath of Allegiance to other States, who are not by oath bound to support, nor claim any right to rule over us, the independency of this State is at an end.

If a man may be taken up without any previous accusation upon oath, all liberty is at an end.

If a man may be condemned without any public trial, or pretense of violation of a law, all law is at an end.

If he may be determined against by his known and professed enemies, whom he is not allowed to except against, all appearance of justice is at an end.

If a man cannot preserve liberty and property, without taking an oath, which cannot be known whether it be true, and in part is known to be false, all decency is at an end.

And in a word, where the Constitution is not a law to rulers, when judges and powers are set up in manifest opposition to it—where natural justice, which condemns no man without a crime proved, is disregarded—where a set of men, not sworn to act according to law, and to do justice

are vested with discretionary powers, to harass or spare whom they please, I ask what constitution, what law, what liberty or property can the people possibly hope for, what motive can they have to swear, or what benefit can they expect from an oath of allegiance! What great blessing can those, who may be ruled without, or contrary to law and the constitution, expect from their rulers, and what can those who rule contrary to a constitution, from which they derive all their authority, and which they have sworn to support, expect from the people?

I submit it, gentlemen, whether the treatment I have received comes within any of these cases, but as the gentlemen who were called upon before me, were prisoners on parole (which it seems is not to be held sacred).

I look upon myself as the very first victim singled out to feel the effects of a power which will greatly affect every man in this State. If any government in its proper channel may require an oath of the people, I must yet look upon it as a great stretch of power, that no man shall be permitted to swear, unless he produces two vouchers, this I conceive equally dishonorable to government, the vouchers that are to be presented, and the person that is to take the oath.

If a government can not acquiesce in the highest assurance they can receive an oath, it marks very strong diffidence, which is usually the effect of fear, as that is of something else.

If two persons vouch for one, and he is to swear notwithstanding, it is plainly treating the vouchers like men that cannot be credited. If no man is to be admitted to swear without vouchers, it plainly implies a supposition that he would forswear himself. This I apprehend a most ungenerous illiberal presumption, (unworthy of a wise government and intolerable to a virtuous people).

In free government no person can be compelled to appear before any but the lawful judge, and in case of refusal and contempt, may be proceeded against and outlawed. I have been ordered to appear before judges who have no existence in our Constitution, under the moderate penalty, not of being proceeded against and outlawed, but of an immediate forfeiture of my effects, and of being sent to any gaol without bail or mainprize.

When I appeared I was not indeed required to take an oath, but had the alternative set before me, either to take it, or be banished in forty days—that I had some scruple—and had heard that the Committee themselves had altered the oath, availed me nothing. The chairman told me that if they acted wrong, they were liable to be called to an ac-

count, by the Assembly, I suppose, who will not meet till after I am banished, and so shall have it out of my power to prefer a complaint.

A power to tender an oath to deprive a man of half his estate, and banish him from every endearing connection, is lodged in seven men, without appeal, without check, without challenge. I verily believe this State is the only one which hath trusted so few men with so much power—a power which annihilates Grand Juries altogether, and effectually renders Petty Juries useless. Formerly in a trial, the issue of which might not be above ten pounds, we had a jury of twelve men, any of whom might be challenged, who must be freeholders, and unanimous in their verdict. As the matter is now mended, every man's person and half his property lies at the mercy of seven men, who need not have any qualifications, need not receive or produce any accusation, or hear any evidence, nor judge of the breach of any law, but only swear that they will judge and determine to the best of *their* knowledge, without favour or affection.

Besides the civility of hearing a short defense without interruption I must do the committee the justice to acknowledge that they have proceeded against me more formally than against the two gentlemen heard before, or as far as I know, against any that were heard after me. They exhibited some charge, a very enormous one indeed, a parallel to which I doubt whether the most experienced lawyer will find in any law books new or old. The Chairman, by desire most gravely and solemnly asked me "Whether before I went to the Continental Congress as a delegate, I had ever signed the Association," and must it not be evident that a person, who may but be asked so important a question, must be a suspected person of course, and deserve to be banished as an internal enemy of the State? You may be informed by numbers who were present that this great and mighty charge was the sum total of all that was offered to be alledged against me. I offered to swear, that while I enjoyed the protection of the State I would in all things do my duty as a good and faithful freeman.

Would give no intelligence to, nor take up arms in aid to the troops of the King of Great Britain. And that I had received no letters of protection since the war.

But all this would not answer the purpose.

I have begged to be excused from swearing myself a subject, till the Assembly had reconsidered whether we ought to be subjects or freemen. I have hesitated to take an Oath of Allegiance to other States, who are bound by no oath to us.

I have refused to swear that I have received no protection from the King of Great Britain, because every one who knows me, must know it to be false.

And for this I am now to be banished, and have half my estate taken from me. By the act no provision is made to transport any that may be thought enemies, but have no estate or means to transport themselves, probably because it is found by experience, that those who have the least to lose, are always the best friends to their country.

I will not take up more of your time, but embrace this seasonable opportunity, Gentlemen of the Grand Jury, before I am driven out of this country, to leave with you upon record, that in my opinion no people can be more miserable than those who may have laws made for them without any regard to a Constitution, who may be judged without evidence or the trial by a jury of their peers, deprived of liberty and property without any accusation made or proved against them, who must submit to their enemies as their judges, and to men, who without any disguise, alter the Constitution from which they derive their authority, and which they have sworn to support, as their rulers.

To be punished for no crime, even pretended to be committed, always carries a strong appearance of injustice, but there may be cases in which banishment may be a greater injustice than hardship.

J. J. ZUBLY.

Savannah, Oct. 8th, 1777.

P. S. I should be glad to know upon what principle, natural, humane, divine, moral, legal, equitable or conscientious, any jury upon oath, or any impartial Barbarian, could possibly condemn a man as an internal enemy, against whom no crime has been alledged, whose veracity is not disputed, and who offers solemnly to swear not to give any intelligence to, nor take up arms to assist an enemy, and in all things to do his duty as a good and faithful freeman of the State.