

**George Mason to George Washington and George William Fairfax, December 23, 1765, with Plan, Letters to Washington and Accompanying Papers. Published by the Society of the Colonial Dames of America. Edited by Stanislaus Murray Hamilton.**

**FROM COLONEL GEORGE MASON.** <sup>1</sup>

GUNSTON-HALL 23d. Decemr. 1765.

GENTLEMEN

Inclosed is the Scheme I promised you for altering the method of replevying Goods under Distress for Rent: I thought it necessary to explain fully the Land-lord's Right by the common Law, to shew that our Act of Assembly<sup>2</sup> was a mere Matter of Indulgence, & that an Alteration of it now will be no Incroachment upon the Tenant: the first part of it has very little to do with the Alteration proposed, & only inculcates a Doctrine I was always fond of promoting, & which I cou'd wish to see more generally adopted than it is like to be: the whole is indeed much longer than it might have been, but that you will excuse as a natural Effect of the very idle Life I am forced to lead. I beg you will alter such parts of it as either of you think exceptionable.

If I had the Act of Assembly obliging our Vestry to pay for the Glebe<sup>3</sup> &c. I wou'd prepare a petition for Redress, & get it signed in Time.

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Wishing the Families at Belvoir & Mount Vernon all the Mirth & Happiness of the approaching Festival, I am Gentm.

Yr. most obdt. Hble Sert. G MASON

*Scheme for Replevying Goods and Distress for Rent.*<sup>4</sup>

The policy of encouraging the Importation of free people & discouraging that of Slaves has never been duly considered in this Colony, or We shou'd not at this Day see one Half of our best Lands in most parts of the Country remain unsettled, & the other cultivated with Slaves; not to mention the ill Effect such a practice has upon the Morals and Manners of our people: one of the first Signs of the Decay, & perhaps the primary Cause of the Destruction of the most flourishing Government that ever existed was the Introduction of great Numbers of Slaves — an Evil very pathetically described by the Roman Historians — but 'tis not the present Intention to expose our Weakness by examining this Subject too freely.

That the Custom of leasing Lands is more beneficial to the Community than that of settling them with Slaves is a maxim that will hardly be denied in any free Country; tho' it may not be attended with so much imediate profit to the Land-holder: in proportion as it is more useful to the public, the Invitations from the Legislature to pursue it shou'd be stronger: — no Means seem so natural as securing the payment of Rents in an easy & effectual Manner: the little Trouble & Risque attending this Species of Property may be considered as an Equivalent to the greater profit arising from the Labour of Slaves, or any other precarious & troublesom Estate. The common-Law (independant of any Statute) gives the Land-lord a right to distrain upon anything on his Land for the Rent due; that is, it puts his Remedy into his own Hands: but as so unlimited a power was liable to be abused, it was found necessary to punish the Abuse by penal Statutes, made in terrorem, to preserve Justice, & prevent the Oppression which the poor might otherwise suffer from the rich, not to destroy the Land-lord's Right, which still remained unimpeached, and has not only been

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exercised in this Colony from its first Settlement, but has obtained in our Mother-Country from Time immemorial. Uninterrupted life & long Experience carry with them a Conviction of general Utility.

The fluctuating State of our Trade, the Uncertainty of our Markets & the Scarcity of Money frequently render it impracticable for the Debtor to Raise Money out of his Effects to discharge a sudden & perhaps unexpected Judgement, & have introduced a Law giving the Debtor a Right to replevy his Goods under Execution by Bond with Security (approved by the Creditor) to pay the Debt & Costs with Interest in three Months; which Bonds are returnable to the Clerk's Office whence the Execution issued, to remain in the Nature of Judgements, & final Executions may be obtain'd upon them when due by a Motion to the Court, with ten Days notice to the partys. The Legislature, considering Distresses for Rents in the same Light with Executions for common Debts, has thought fit to extend the same Indulgence to them; tho' it would not be hard to shew that the Cases are by no means similar, & that the Reasons which are just in the former do not hold good in the latter: by comparing the Laws there also appears such an Inconsistency in that relating to replevin Bonds for Rent as may render the Method prescribed difficult if not impracticable; there being no previous Record (as in the Case of Executions) the Bonds do not seem properly returnable to the Clerk's Office, nor is that Matter clearly express'd or provided for in the Act. This has not hitherto been productive of much Inconvenience; tho' contrary to the Course & Spirit of the common-Law, the Land-lord may thereby be brought into a Court of Judicature before he can get the Effect of a just & legal Distress; but in our present Circumstances it will occasion manifest Injustice.

If the Officer making a Distress, upon being offered Security, refuses to take a Bond for Want of Stamp'd Paper, the Goods of the Tenant must be immediately exposed to Sale, & he deprived of the Indulgence intended by the Act of Assembly.

If the Officer takes a replevin Bond as usual, the Land-lord will lose his Rent, the Tenant then having it in his power to keep him out of it as long as he pleases, for in the present

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Confusion & Cessation of Judicial proceedings the Land-lord will not have an Opportunity of applying to Court for an Execution when the Bond becomes payable, or if he does, the Clerk will not venture to issue one. In either Case there is such a Hardship as calls for the Interposition of the Legislature.

These Inconveniencys it is conceived may be obviated if the Tenant, instead of replevying his Goods by Bond, had a Right to Supersede the Distress for three Months by Application to a single Magistrate, who shou'd be empowered & required, upon the Tenants producing under the Hand of the person making the Distress a Certificate of the Rent distrained for & Costs, to take from the principal & good Securitys a conditional Confession of Judgement, in the following or some such Form.

“VirginiaCounty ss.

“You A. B. — C. D. — & E. F. of the sd. County do confess “Judgement unto G. H. of the County of ... for the Sum of “... due unto the sd. G. H. for Rent, for which Distress has been “made upon the Goods of the sd. A. B. and also for the sum of “... the Costs of the sd. Distress: which said sums of ... “and ... Costs with legal Interest from the Date hereof to be “levyed of Your and either of Your Bodys Goods or Chattels for “the Use of the sd. G. H. in Case the sd. A. B. shall not pay & “satisfy to the sd. G. H. the said sums of ... and ... Costs “with Interest thereon as aforesaid within three months at far- “thest from the Date hereof — Taken & acknowledged the ... “Day of ... before Me one of his Majesty's Justices of the “Peace for the sd. County of ... Given under my Hand the “Day & Year aforesaid. — To J. K. Sherif – or Constable (as “the Case is)”

Which Confession of Judgement should restore to the Tenant his Goods, & be return'd by the Officer to the Land-lord, who at the End of the three Months (giving the partys ten Days Notice) shou'd be entitled to an Execution thereon, to be awarded by a single Magistrate also.

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This Method will protect the Tenant from Oppression by confirming the Indulgence the Act of Assembly formerly gave him, at the same Time that it secures the Land-lord in the payment of his Rent, & it can hardly be objected to as giving a single Magistrate a new & dangerous Jurisdiction, when it is considered that the Application to a Court on replevin Bonds for Rent was mere Matter of Form, in which the Court cou'd exercise no judicial power, and that an Execution might as safely be awarded by a Magistrate out of Court in the Case of Rents, where (as has been before observed) there was no original Record or Jurisdiction in the Court, but by the common-Law the sole power vested in the Land-lord; who, shou'd the proposed Alteration take place, will be as liable to be punished for the Abuse of it as he was before. If the Form of the Judgement recommended is objected to as subjecting the Body to Execution in a Case where the Goods only were originally liable; let it be considered that it is at the Tenant's own Request the Nature of his Debt is changed, that when the Land-lord sues for Rent, he may upon a Judgement order a Fi: fa: or a Ca: sa: at his own Option, & that he may do the same thing in the Case of replevin Bonds.

If some such Alteration as is here proposed shou'd be thought necessary, any little Errors or Deficiencys in this Scheme may be easily corrected in drawing up the Law. —

1 Addressed, "To Colo. Geo: Fairfax & Colo. Geo: Washington."

2 Hening, vol. vi. p. 9.

3 Hening, vol. vi. p. 89.

4 Inclosed in letter of December 23.