

Josiah Philips

“Enemy to the Human Name” or Defender of the British Crown

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Preface

The life of Josiah Phillips is an important story to be told, not only for local history purposes, but also for state and national purposes. The actions of this Princess Anne County laborer reverberated at all levels of government and even threatened the success of the revolution in Virginia.

Prior to his notoriety, Josiah Phillips was a person of low socioeconomic status; therefore, many records that would be helpful in constructing his story are either missing or never existed. As a result, readers of this paper may notice higher than normal amounts of conjecture and uncertainty. I have tried to be very clear in expressing information that we do not know for certain, but given the circumstances it is vital that we make some assumptions and explore various scenarios if we are going to give the story of Josiah Phillips its due diligence.

Also there have been a few other excellent examinations of Josiah Phillips, which focus mostly on the legality of Thomas Jefferson's 1778 use of a Bill of Attainder to bring Phillips to justice. This paper seeks to tell the story of Josiah Phillips as a character in history; therefore, I have avoided a lengthy overly legalistic discussion of the Attainder itself. If readers are interested in the legality of the Attainder, they should consult one of the excellent sources below.¹

By telling the story of Josiah Phillips as a character in history from start to finish as best as we can, I believe new elements of his story become evident, and I think these elements have the power to change the image of this controversial historical figure.

¹ Hast, Adele, *Loyalism in Revolutionary Virginia: The Norfolk Area and the Eastern Shore*, Anne Arbor, MI; UMI Research Press, 1982; Trent, W.P., "The Case of Josiah Philips," *The American Historical Review* 1, no. 3 (April 1896), 444-454; Steilen, Matthew J., "The Josiah Philips Attainder and the Institutional Structure of the American Revolution," *Howard Law Journal* 60, no. 2, (2017): 414-458; Tyree, William Romaine, "The Case of Josiah Phillips: How Virginia Came to Pass a Bill of Attainder," *The Virginia Law Register* 16 (January 1, 1911): 648-658.

Introduction

On what must have been a hot late May afternoon in eastern Virginia, Thomas Jefferson hurried to put the finishing touches on a bill which he hoped would safeguard Virginia's fledgling revolution from a formidable loyalist insurrection that was growing in the Commonwealth's farthest eastern reaches. For many, however, Jefferson's bill would challenge the very ideals that same revolution was built on.

The bill reads like an indictment. It names suspects – “Josiah Phillips his associates and confederates.”² It also accuses the suspects of crimes – “committing murders, and burning houses, wasting farms and doing other acts of hostility”.³ It even gives a date for the suspects to turn themselves in by – June 30th, 1778.⁴

But then it takes an ominous turn. The bill continues to proclaim that if Josiah Phillips and his associates do not turn themselves by the deadline, they “shall stand convicted and attained of high treason, and shall suffer the pains of death.”⁵

And then, the kicker, “it shall be lawful for any persons with or without orders to pursue and slay the said Josiah Phillips and any others who have been his associates or confederates at any time after the 1st day of July.”⁶

Jefferson's bill makes an accusation, declares guilt, condemns the suspects to death, and declares open hunting season on Josiah Phillips and his associates all in one page.

A man, who not two years before had signed the Virginia Declaration of Rights guaranteeing anyone accused of a crime “a speedy trial by an impartial jury”, had just potentially compromised the fundamental ideals of America's fight for independence, by crafting a legislative instrument called a Writ of Attainder.⁷

² Bill to Attaint Josiah Philips and Others, [28 May 1778],” *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/01-02-02-0064>., [Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 189–193.

³ Bill to Attaint Josiah Phillips and Others, , [28 May 1778],” *Founders Online*, National Archives.

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ *The Proceedings of the Convention of Delegates, Held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday the 6th of May, 1776*. Williamsburg (1776), 100-103; Hening, William W. (ed) *The Statutes at Large*, IX, (1890-1923) 109-112.

The question then becomes just who was Josiah Phillips – a man who Governor Patrick Henry called “an enemy to the human name”, what did he do to be accused of “levy[ing] war against this Commonwealth”, and perhaps most importantly why did he do it.⁸

The ensuing pages of this paper will strive to answer those questions.

Early Life

On the eve of Thomas Jefferson’s Writ of Attainder, Josiah Phillips was notorious throughout the Tidewater. He had established a loyalist insurrection in Princess Anne County and Norfolk County that “at the bare mention of which humanity shudders.”⁹

William Wirt, an early biographer of Patrick Henry, who corresponded extensively with Thomas Jefferson, Edmund Randolph, and others to get an accurate depiction of the events, offers the following description of the Phillips insurrection:

“Scarcely a night passed without witnessing the shrieks of women and children, flying by the light of their own burning houses, from the assaults of these merciless wretches, and everyday was marked by the desolation of some farm, by robberies on the highway, or the assassination of some individual whose patriotism had incurred the displeasure of this fierce and bloody leader”¹⁰

Prior to establishing the insurrection which terrified Virginia’s titans of independence, Josiah Phillips appears to have been a normal laborer who floated around Princess Anne and Norfolk counties looking for work.

We know from the actual Writ or Bill of Attainder that Josiah Phillips was a “labourer of the Parish of Lynhaven of Princess Anne” county, presumably just before he took up arms in support of the British crown.¹¹ Prior to that, however, the historical record is much less forthcoming with any information pertaining to Josiah Phillips.

Fortunately, a few clues about Josiah Phillips’ early life do exist hidden deep in the records of Princess Anne County and neighboring Norfolk County.

The first mention of Josiah Phillips occurs in a 1771 tithable list from Norfolk County. During the colonial period, all Virginian males over the age of sixteen, as well as all

⁸ Bill to Attaint Josiah Phillips and Others, [28 May 1778],” *Founders Online*, National Archives; Elliot, Jonathon, comp. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3. Philadelphia, PA: J.B. Lippincott, 1941

⁹ Wirt, William, *Sketches of the Life and Character of Patrick Henry*, Hartford: S. Andrus & Son, 1852, 234.

¹⁰ Wirt, , *Sketches of the Life and Character of Patrick Henry*, 234.

¹¹ Bill to Attaint Josiah Phillips and Others, [28 May 1778],” *Founders Online*, National Archives.

slaves, all Native Americans, and all female heads of household, owed the government a poll tax.¹² The records of who had paid were compiled by parish in annual tithables lists.

Josiah Phillips' appearance in the 1771 Norfolk County list reveals that he was working for a man named Jonathon Manning, on Manning's 80 acre piece of land in St. Bride's Parish.¹³ Given that Phillips' name is entered after Manning's, it is likely the Manning paid Phillips' tax for him. We also know from this list that by 1771, Josiah Phillips was at least 16 years old, however, is it important to be clear that he could have been much older than 16 at this point.

What is perhaps most interesting about the 1771 tithable list from St. Bride's Parish though is the number of names on the list which appear later alongside Phillips' name in things like indictments and court proceedings.

The 1771 St. Bride's tithable list contains the names of Levy Sykes, Robert Stewart, James Hodges, and Robert Hodges – all of whom would play major roles in Phillips' insurrection just a few years later.¹⁴ Given the relatively small size of St. Bride's Parish and the number of future Phillips associates living in the parish in 1771, it is extremely likely that Josiah Phillips got to know these men during the year he spent living and working in St. Bride's Parish.

Since the 1771 tithable list contains the first mention of Josiah Phillips, it is also possible that Josiah Phillips was actually born and raised in St. Bride's and that Sykes, Stewart, and Hodges were all longtime friends of his.

After his appearance on the tithable list, Josiah Phillips slips out of the historical record for a couple of years. It is not until the spring of 1775 that Josiah Phillips surfaces again.

On April 11th the court ordered James Tooley and George Durandt Corprew to audit the estate of Henry Phillips, a Princess Anne County man who had died several years earlier. The audit was returned to the court on July 11th, 1775, and about three quarters of the way down the page it reads "To paid Josiah Phillips...4.0.3".¹⁵

Little is known about Henry Phillips other than he was the husband of Courtney Dawley, the daughter of Hillary Dawley a large land owner in the Blackwater area of Princess Anne County as well as in Norfolk County. Princess Anne County court records claim that Courtney Dawley "intermarried" with Henry Phillips, which suggests that he was not

¹² Gentry, Daphne. "Taxes in Colonial Virginia (VA-NOTES)." Library of Virginia, Accessed February 11, 2019, https://www.lva.virginia.gov/public/guides/va20_coltax.htm

¹³ Wingo, Elizabeth B., comp, *Norfolk County, Virginia Tithables 1766-1780*, N.p.: E.B. Wingo, 1985.

¹⁴ Wingo, Elizabeth B., comp, *Norfolk County, Virginia Tithables 1766-1780*,

¹⁵ Deed Book 14 Princess Anne County (Va.) Deed Books, 1708-1773. Princess Anne County (Va.) Virginia Beach (City)/Princess Anne County Court Records, 151

of the same socioeconomic class as the wealthy Dawley family.¹⁶ Both Henry Phillips and his wife Courtney died before January 14th, 1773, and they left a daughter, Anne, as their heir to Courtney's share of the Dawley wealth.¹⁷

Other than Josiah Phillips, Henry Phillips' estate paid 30 other people, including Jonathon Manning, Josiah Phillips' former employer. In total the estate paid out a total of sum of 75 pounds, 7 shillings, and 6 ½ pence.¹⁸

Why Henry Phillips would have paid Josiah Phillips is a mystery. Henry Phillips had no recorded will, so it is impossible to tell if Josiah Phillips was a relative of Henry Phillips and the 4 pounds and 3 pence was some sort of inheritance or if Josiah Phillips simply did some sort of work for the estate after Henry Phillips' death.

It is unlikely that Josiah Phillips was the child of Henry and Courtney Phillips, but it is also impossible to tell, since Josiah Phillips was an adult by the time of Henry and Courtney Phillips' deaths.

The fact that Josiah Phillips rarely appears in the historical record until the eve of revolution is the result of several factors. One of which is that as a landless laborer there was little reason for him to appear in things like court proceedings. Many of the court proceedings recorded in local Minute Books, Order Books, and Deed Books deal with land deals, grievances about money, or criminal acts.

Another reason Phillips only appears sparsely in the historical records is that while Norfolk County's tithable records are extensive and well preserved, Princess Anne County's tithable records are not. Some Princess Anne County tithable lists remain in the Special Collections of the Library of Virginia; however, many of these lists are just fragments of the original lists, and Josiah Phillips' name does not appear on any of them.¹⁹

From the Bill of Attainder, as well as several other sources, we know that Josiah Phillips lived in Princess Anne County, but since the tithable records are perhaps the best way to track someone of lower socioeconomic status, the state of the Princess Anne County tithable records makes it impossible to determine exactly where and for how long Josiah Phillips lived in Princess Anne County.

¹⁶ Creecy, John Harvey, ed, *Virginia Antiquary: Princess Anne County Loose Papers 1700-1789*, Vol. 1, Richmond, VA: Dietz Press, 1954, 105.

¹⁷ Creecy, John Harvey, ed, *Virginia Antiquary: Princess Anne County Loose Papers 1700-1789*, Vol. 1, 105; Deed Book 13 Princess Anne County (Va.) Deed Books, 1708-1773. Princess Anne County (Va.) Virginia Beach (City)/Princess Anne County Court Records, 158

¹⁸ Deed Book 14 Princess Anne County (Va.) Deed Books, 1708-1773. Princess Anne County (Va.) Virginia Beach (City)/Princess Anne County Court Records, 151

¹⁹ Princess Anne County (Va.) Lists of Tithables, 1763, 1767, 1771-1779. Local government records collection, Virginia Beach (City) Court Records. The Library of Virginia, Richmond, Va. 23219.

Despite this lack of certainty, we can still get a good idea of where Josiah Phillips lived in Princess Anne County based on the information that is in the historical record. We know that Josiah Phillips worked for and lived with Jonathon Manning in St. Bride's Parish, Norfolk County, and the historical record also tells us that Josiah Phillips had some relationship with the family of Henry Phillips in the Blackwater area of Princess Anne County.

Both St. Bride's Parish and the Blackwater area are located in the southernmost parts of the state of Virginia, not far from the North Carolina border, and while St. Bride's and Blackwater are located in different counties, they lie almost adjacent to each other on the map. It is interesting to note that in 1789 the residents of Blackwater Petitioned the General Assembly to break from Princess Anne County and to join St. Bride's Parish in their own county. While this petition was denied, it further demonstrates that the people of Blackwater and St. Bride's identified with each other and that the two areas were viewed by the residents as part of the same general region.²⁰ Finally, not only are St. Bride's and Blackwater dominated by soggy and impassible swamps, but they are also in close proximity to the Great Dismal Swamp, and it is in these very swamps that the Phillips' insurrection would eventually seek refuge and set up its home base.

Together all of this suggests that Josiah Phillips likely lived in or grew up in southern Norfolk County and southern Princess Anne County for a considerable amount of time, and it can be assumed that during these years, he gained a local's knowledge of the winding creeks and murky swamps, that would later enable him to build an insurrection that would lay siege to a region and challenge the ideals of those in the capital of Williamsburg.

Before the Phillip's insurrection can be discussed in detail, however, it is essential to understand how America's fight for independence played out in Virginia, and more importantly in Norfolk and Princess Anne County.

Revolution in the Tidewater

In the spring of 1775, a series of events began unfolding in Williamsburg that would change everything. These events would set the Commonwealth of Virginia on a course that would eventually lead to independence, they would bring the fight against the British to Hampton Roads, and they would lead a lowly Princess Anne County laborer to become the most wanted criminal in Virginia.

As tensions between the American Colonists and the British began to reach a crescendo up in the Massachusetts Colony, John Murray the 4th Earl of Dunmore began questioning

²⁰ Citizens: Petition, Princess Anne County, October 20th, 1789, Legislative Petitions Digital Collection, Library of Virginia, Richmond, Va.

his own hold on power as the Royal Governor of Virginia. The rhetoric in the House of Burgesses had grown more and more antagonistic toward British rule, and local militias had begun stockpiling arms and gun powder.²¹

A little over a month after Patrick Henry's famous "Give me liberty or give me death" speech at the Second Virginia Convention, Lord Dunmore had decided he had had enough, and in the early morning hours of April 21st, he made an order which dramatically changed the course of events in Virginia. That morning, Lord Dunmore ordered the British royal marines to begin seizing gunpowder from the Williamsburg magazine.²²

The seizure of the gunpowder sparked an immediate and intense reaction from the colonists, who believed that Lord Dunmore had just dramatically escalated the conflict. Patrick Henry even prepared a militia to march on Williamsburg. Despite several attempts by Dunmore to appease the colonists, British rule in Virginia continued to spiral out of control, forcing Lord Dunmore and his family to flee Williamsburg for good. On the morning of June 8th, the Dunmore family fearing for their safety arrived aboard the British warship the *Fowey*, essentially marking the end of British control of Virginia.²³

Shortly after taking refuge aboard the *Fowey*, Lord Dunmore dispatched his family back to England, and began plotting his next move. Determined to retake Virginia, Lord Dunmore chose to sail to Norfolk, Virginia, a merchant town with strong loyalist sympathies. Upon arriving, he anchored his mobile operations base in the Norfolk harbor, and began building his resistance.²⁴

Having established a floating loyalist capital in the middle of the Elizabeth River, Dunmore spent the next several months gathering supplies and support. Early on, this took the form of raids on local plantations. These raids took a toll on the residents of Hampton Roads. One Norfolk resident wrote that "We are kept in constant alarm in this neighborhood by Lord Dunmore. The Governor sails up and down the river, and where he finds a defenseless place, he lands with his soldiers, plunders the plantation and carries off the negroes."²⁵ Another local resident wrote that "I have hitherto been silent about our Governor's operations, but I cannot help saying something of them as they are marked with almost every species of cruelty that a wicked mind could suggest."²⁶

²¹ Selby, John E, *The Revolution in Virginia: 1775-1783*, Williamsburg, VA: Colonial Williamsburg Foundation, 1988, 55-80.

²² Selby, John E, *The Revolution in Virginia: 1775-1783*, 55-80.

²³ Ibid

²⁴ Ibid

²⁵ Turner, Florence Kimberly, *Gateway to the New World: A History of Princess Anne County, Virginia 1607-1824*, Easley, SC: Southern Historical Press, 176.

²⁶ Turner, Florence Kimberly, *Gateway to the New World: A History of Princess Anne County, Virginia 1607-1824*, 176.

By November, Lord Dunmore had grown confident in both his supplies and his man power. Several miles outside of Norfolk, sat the town of Kemp's Landing in Princess Anne County. The town essentially marked the northern terminus of the main road that wound through Virginia's southern swamps connecting Norfolk to North Carolina. As Dunmore got to know the area surrounding his new floating capital, he began to realize that controlling Kemp's Landing and controlling the road south were essential to protecting the loyalist beachhead that he was attempting to establish in Norfolk and Princess Anne County.²⁷

On a Sunday evening in mid-November, Dunmore received word from his scouts that patriot troops had begun gathering around Great Bridge, a bridge several miles south of Kemp's Landing that served as one of the main choke points on the road to North Carolina. The next day he along with a force of around 100 British regulars and 20 local loyalists marched to Great Bridge to investigate.²⁸ When they arrived, they found no patriot troops and began marching back to Kemp's Landing. Little did they know, they had fallen into a trap.²⁹

When they arrived back at Kemp's Landing a patriot force of several hundred was waiting to ambush them. The patriot force, however, was not well trained, and they were "dispersed after a few discharges from the [loyalist] troops."³⁰ After the initial volleys from the British forces, the patriot militia scattered, leaving seven patriot dead laying on the battlefield. During the chaotic patriot retreat, Dunmore and his troops were also able to capture eighteen patriot fighters, including the militia commander, Norfolk resident Colonel Joseph Hutchings.³¹

Feeling emboldened by the rout at Kemp's Landing, Lord Dunmore in an attempt to harness momentum and double down on his efforts to recruit loyalists to his cause issued a proclamation which terrified patriots across the colony. Written on November 7th and published after the fight at Kemp's Landing, the proclamation begins as a normal declaration of martial law, "I do, in virtue of power and authority given to me, by his Majesty, determine to execute martial law, and cause the same to be executed throughout

²⁷ David, James Corbett. *Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary America - with Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings*. Charlottesville, VA: University of Virginia Press, 2013. Chapter 4

²⁸ Selby, John E, *The Revolution in Virginia: 1775-1783*, 64.

²⁹ Curle, HWR. "Intercepted Letters of Virginian Tories, 1775." *The American Historical Review* 12, no. 2 (January 1907), 341-46.

³⁰ Curle, HWR. "Intercepted Letters of Virginian Tories, 1775." *The American Historical Review*.; David, James Corbett. *Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary America - with Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings*.

³¹ Curle, HWR. "Intercepted Letters of Virginian Tories, 1775." *The American Historical Review*; Selby, John E, *The Revolution in Virginia: 1775-1783*, 64.

this colony.”³² Given that patriot forces and loyalist forces had already been engaging in open hostility for a number of weeks, this was hardly a surprise.

Dunmore then continued to say, “I do required every person capable of bearing arms to resort to his Majesty’s Standard, or be looked upon as traitors to his Majesty’s Crown and Government.”³³ By requiring every Virginian to pick a side, Dunmore was clearly escalating the conflict for many Virginians, who still hoped the struggle would blow over, as others such as Bacon’s Rebellion had.

The average Virginian reading this proclamation in Dixon and Hunter’s *Virginia Gazette* probably was not surprised by anything Dunmore had written up to this point. That is until they got to the next sentence. After declaring that all Virginian’s pick a side in the growing fight, Dunmore went to “farther declare all indentured servants, Negroes or others (appertaining to rebels) free.”³⁴

All indentured servants, Negroes or others were to be free. The worst fear of many Virginians was manifesting itself right before their eyes. Dunmore hoped that by emancipating all those in bondage that they would flock to their liberator’s aide, and he hoped that it would trigger the massive revolt he needed to regain control of the Virginia Colony.

On November 30, in a letter to Major General William Howe, Dunmore boasted that

“I issued the enclosed Proclamation which has had a Wonderful effect as there are not less than three thousand that have already taken and signed the enclosed Oath. The Negroes are flocking in also from all quarters which I hope will oblige the Rebels to disperse to take care of their families, and property, and had I but a few more men here I would March immediately to Williamsburg my former place of residence by which I should soon compel the whole Colony to Submit.”³⁵

He went on tell Major General Howe of his plans to construct the force which he hoped would enable him to retake Virginia:

“I have accordingly ordered a Regiment (Called the Queens Own Loyal Virginia Regiment) of 500 men to be raised immediately consisting of a Lieutenant Colonel commandant, a Major and Ten Companies each of which is to consist of one Captain, 2 Lieutenants one Ensign and 50 Privates with none Commissioned Officers in proportion; by my Proclamation that I offer freedom to the Slaves, (of

³² Dixon, John and William Hunter, *The Virginia gazette*, Williamsburg [Va.], November 25, 1775, page 3.

³³ Dixon, John and William Hunter, *The Virginia Gazette*, Williamsburg [Va.], November 25, 1775, page 3

³⁴ Ibid

³⁵ Clark, William Bell, ed, *Naval Documents of The American Revolution*, Vol. 2, Washington D.C.: The U.S. Navy Department, 1966. Dunmore to Howe, November 30, 1775, page 1210.

all Rebels) that join me, in consequence of which there are between two and three hundred already come in and these I form into a Corps as fast as they come in giving them white Officers and Non Commissioned Officers in proportion.”³⁶

As Dunmore continued to build up his army, he began fortifying his position in southeastern Virginia. By November 23rd, he had taken control of the city of Norfolk and was constructing defenses around the city.³⁷ By this point the loyalists of Tidewater must have been rejoicing. South Hampton Roads was back under British control, and it began to look as if Lord Dunmore may be able to retake Williamsburg.

Unfortunately for Dunmore, the loyalist tide had reached its high water mark. Dunmore knew that his biggest weakness was still the road that led through the southern marshes toward North Carolina, and he continued to hear rumors that a large patriot force armed with cannons was gathering within striking distance of his southern flank.³⁸ In order to protect recently acquired Norfolk, Dunmore knew he needed to control Great Bridge, the only major crossing of the Elizabeth River heading out of Norfolk.

The patriot forces also knew that Great Bridge was the key to Norfolk, as well as the key to finally driving Lord Dunmore out of Virginia. So what evolved in the southern marshes of Virginia was a stalemate. The patriot forces encamped themselves at the southern end of the Great Bridge causeway, and Dunmore and his forces fortified the northern end of the Great Bridge causeway, constructing Fort Murray.³⁹

For several weeks a status quo existed between the British forces and the patriot forces. Several shots would be fired back and forth, but no one really challenged the other for control of the vital choke point of Great Bridge. Occasionally brief skirmishes occurred at other parts of the river as one side would attempt to ford the river and sneak in behind the enemy, but no major fighting occurred.⁴⁰

On the morning of December 9th, however, that all changed. Concerned with the constant rumors of a large patriot force gathering in North Carolina, Lord Dunmore ordered a force of 100 British regulars and 60 local loyalist fighters to storm the bridge and take the patriot encampment on the southern end. Dunmore ignored the military risk of sending 160 soldiers down a narrow bridge toward a well-fortified enemy position because after

³⁶ Clark, William Bell, ed, *Naval Documents of The American Revolution*, Vol. 2, Washington D.C.: The U.S. Navy Department, 1966. Dunmore to Howe, November 30, 1775, page 1210.

³⁷ Selby, John E, *The Revolution in Virginia: 1775-1783*, 69.

³⁸ Selby, John E, *The Revolution in Virginia: 1775-1783*, 72.

³⁹ Selby, John E, *The Revolution in Virginia: 1775-1783*, 55-80; David, James Corbett. *Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary American - with Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings*, Chapter 4.

⁴⁰ Ibid

his success at Kemp's Landing, he believed that a group of rebel forces was simply no match for his British regulars.⁴¹

Despite Dunmore's confidence, the British forces were unable to overcome their extreme military disadvantage and were forced to rapidly retreat, surrendering their post at Fort Murray in the process. By routing the British forces at Great Bridge, the patriot forces had not only scored their first victory of the war in Virginia, but they also now controlled the ever important road to Norfolk.⁴²

For Lord Dunmore this meant that his brief occupation of Norfolk was now over. Even though he had fortified the city, Dunmore knew with the force he had that he could not adequately defend his position in Norfolk, so he, along with many of the prominent Norfolk loyalists and some of his forces, retreated back to the floating capital.

On New Year's Day 1776, Dunmore made one last major assault on Norfolk, shelling the town from his ships in the Elizabeth River. The New Year's day attack resulted in the complete destruction of Norfolk, as fire ravaged the city. Exactly who was responsible for the fire is still debated amongst historians, with some suspecting that Continental Army soldiers attempting to punish Norfolk's loyalists were actually to blame. Whether the Patriots or Dunmore's forces were responsible is not important for the purposes of this paper, what is important is that by early January 1776, Norfolk was decimated and firmly in Patriot control.

By May, even the floating capital was in danger, forcing Dunmore to move the entire fleet up the Chesapeake Bay to a place called Gwynn's Island. The loyalist fleet would remain at Gwynn's Island until August, when Dunmore finally threw in the towel and sailed out of the Chesapeake Bay, essentially marking the official end of British rule in Virginia.⁴³

Exactly how Josiah Phillips fits into Dunmore's occupation of Tidewater, but he almost certainly does in fact fit in. Several sources confirm that Josiah Phillips received a commission from Lord Dunmore, presumably to raise troops in service of the crown.⁴⁴ Whether or not Phillips received his commission before the Battle of Kemp's Landing or after it, will probably never be known, but in all likelihood Josiah Phillips met with Lord Dunmore at some point in November of 1775 or just before.

⁴¹ Selby, John E, *The Revolution in Virginia: 1775-1783*, 72-74.

⁴² Selby, John E, *The Revolution in Virginia: 1775-1783*, 72-74.

⁴³ Selby, John E, *The Revolution in Virginia: 1775-1783*, 74, 126.

⁴⁴ Thomas Jefferson to Louis H. Girardin, 12 March 1815," *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/03-08-02-0268>. [Original source: *The Papers of Thomas Jefferson*, Retirement Series, vol. 8, *1 October 1814 to 31 August 1815*, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2011, pp. 334–338.]; Elliot, Jonathon, comp. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3.

Why Josiah Phillips decided to throw his lot in with the royal governor is also somewhat of a mystery. Lord Dunmore chose Norfolk as his loyalist beachhead because of the already strong loyalist sentiment in the region. Norfolk's economy was heavily based on maritime trade, therefore tying it to the British Empire. Many movers and shakers in the city were Scottish merchants, who identified themselves as British citizens unlike Virginia's powerful planter elites.⁴⁵ Josiah Phillips was certainly not one of these wealthy merchants; however, he did represent another group that was sympathetic to the crown – landless laborers.

Those who found themselves at the lower points of Virginia's socio-economic class system might have seen Dunmore's occupation of Tidewater as an opportunity to topple Virginia's planter elite, who controlled much of life in colonial Virginia. At the very least someone like Josiah Phillips would have seen the opportunity to be commissioned into Dunmore's army as an opportunity to climb the socio-economic ladder, an opportunity that could not be passed up.

We also do not know if Josiah Phillips was one of the roughly sixty local loyalist troops that fought in the Battle of Great Bridge. It is interesting though that Great Bridge is relatively close to St. Bride's Parish where Phillips used to work. Also given the intimate knowledge of Virginia's southern swamps that Phillips demonstrated during his subsequent insurrection, it is very possible that Phillips was present at some point in Fort Murray or during some of the events of Dunmore's occupation that took place in Phillips' backyard.

What is clear is that Josiah Phillips had some role in Dunmore's occupation, and what is also clear is that once Dunmore left for Gwynn's Island, Josiah Phillips began to take the fight against patriot forces into his own hands.

The Beginnings of an Insurrection

In August of 1775, a group of Virginia militia officers sent a letter to the Third Virginia Convention in Williamsburg. The purpose of the letters was to update the convention on the evolving situation in Tidewater. It first informs the convention that "the Governor's Cutter had carried off a Number of Slaves belonging to private Gentleman" and suggests that "it is high Time to establish the Doctrine of Reprisal."⁴⁶

⁴⁵ Selby, John E, *The Revolution in Virginia: 1775-1783*, 55-80; David, James Corbett. *Dunmore's New World: The Extraordinary Life of a Royal Governor in Revolutionary American - with Jacobites, Counterfeiters, Land Schemes, Shipwrecks, Scalping, Indian Politics, Runaway Slaves, and Two Illegal Royal Weddings*, Chapter 4.

⁴⁶ The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1775), August 3 1775.

The militia leaders then go on to say “that one (Josiah) Phillips commanded an ignorant disorderly Mob, in direct Opposition to the Measures of this Country.”⁴⁷ Finally, the militia leaders inform the convention that “they wished to crush such Attempts in Embryo.”⁴⁸

This August 1775 reference is the first time that Josiah Phillips appears in the historical record as being the commander of some sort of mob or quasi-military unit. This letter to the convention tells us that Josiah Phillips and a group of his subordinates were actively opposing the patriot struggle for independence by August. Unfortunately, it does not tell us if Josiah Phillips was violently opposing the patriot cause just based on principle, or if he was actively aiding Lord Dunmore in his quest to regain control of the colony.

Dunmore arrived off the coast of Norfolk early in summer of 1775, so it is possible that prior to this August letter that he had already given Phillips his commission. Also given that Dunmore is implicated in the letter of maritime guerilla style raids very similar to the raids Josiah Phillips would later be accused of carrying out in Norfolk and Princess Anne Counties, it is again possible that Phillips was acting under Dunmore’s instruction at the time of this letter. Finally, the fact that Josiah Phillips was already known to the Convention of Virginia as a militant loyalist by August of 1775, certainly increases the chances that he was involved in some way during Dunmore’s later military engagements at Kemp’s Landing and Great Bridge.

On January 13th, about a month after Lord Dunmore was forced to retreat back to his floating capital in Norfolk’s harbor, the Virginia Convention received another letter – this time from the residents of Norfolk and Princess Anne Counties. The letter gives a harrowing report of Dunmore’s raids as well as a plea for help. As residents supportive of the patriot cause, the authors of the letter claim to have:

“been reduced to the cruel necessity of abandoning their aged parents, their wives and children, and leaving them to the mercy of a lawless, plundering soldiery, and the more savage slave; that their plantations had been ravaged, their wives and children stripped almost to nakedness, their very bed chambers invaded at the silent hour of midnight by ruffians with drawn daggers, their houses not only robbed of plate, money, and everything valuable, but wantonly reduced by fire to ashes, their persons treated with every indignity that elated insolence and cruelty could suggest.”⁴⁹

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1776), January 13th 1776, page 94.

The residents go on to say that, since the patriot forces took Norfolk, they have gotten some relief from Dunmore's periodic raids, but they also say that they "have everything to fear from those who have thereby been induced to bear arms against their country."⁵⁰ The letter closes with a plea to the convention, the residents say they are "praying that a strict enquiry might be made into the conduct of those who had appeared inimical to this country, and that they might be removed to some distant part of the colony, or so disposed of as to prevent their doing farther mischief."⁵¹

Josiah Phillips is not mentioned by name in the second letter to the Virginia Convention, but given that we know he was fighting in support of the British crown several months earlier and that he carried similarly styled attacks on patriot supporters later in the war, it is likely that Josiah Phillips was either leading or involved in the Dunmore ordered raids that the letter describes.

Upon receiving the letter describing the attacks, the convention immediately referred the news to the Committee of Safety.⁵² Two days later, presumably based on a recommendation by the Committee of Safety, the Convention resolved that "the inhabitants of the counties of Norfolk and Princess Anne as may be exposed to the attacks of the enemy, to remove themselves and their effects, and that the poorer sort be assisted in their removal by the public."⁵³ The Convention believed that the threat of future loyalist raids still posed such a threat to the residents of Norfolk and Princess Anne Counties that they should move, and they were willing to pay for poorer residents to do so.

The news of the Convention's evacuation resolution did not go over well in Tidewater. On May 28th, the Convention received a petition from Norfolk and Princess Anne asking them to reconsider the resolution. They said that "they have been informed, a resolution hath been passed by this Convention for the removal of the inhabitants of the said county, which resolution, if carried into execution, will involve them in the greatest distress, as many of them have large families, and no places to retreat to, nor can they transport their provisions, necessary to support them, nor have they money to buy them elsewhere, and that most of them had pitched their crops for the present year."⁵⁴

They also claimed that because of the "the burning of the borough of Norfolk, the courthouse of the said county was destroyed, and the place where it stood in the power of

⁵⁰ Ibid

⁵¹ Ibid

⁵² The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1776), page 95.

⁵³ The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1776), Jan 15, 1776, page 96.

⁵⁴ The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1776), May 28, 1776, page 143.

the enemies of America, by which they were prevented from choosing delegates to represent them in this Convention; that they humbly presume their situation and circumstances could not be properly represented.”⁵⁵ Since the courthouse of Norfolk had burned down, preventing the residents of Norfolk from electing representatives to the Convention, the people of Norfolk felt that their situation had not been fully considered before the evacuation resolution was passed. The Virginia Convention took all of this into consideration, and later that day rescinded the evacuation resolution.⁵⁶

It appears that for the next year or so everything in Tidewater calmed down. There are no petitions from local residents to Williamsburg for quite some time. This lull corresponds with the time the Dunmore moved to Gwynn’s Island and subsequently out of the Chesapeake Bay in August of 1776.

By the spring of 1777, however, tensions began to rise again in Tidewater. On June 20th, Williamsburg received word from Lieutenant John Wilson of Norfolk that “sundry evil disposed persons, to the number of ten or twelve, have conspired together, to foment a Dangerous Insurrection in the said County, and at present are lurking in secret places threatening and doing actual mischief to the peaceable and well affect inhabitants of this Commonwealth”.⁵⁷

Wilson then reveals that the insurrection is being commanded by three leaders “who govern and direct said party in their atrocious actions,” - leaders by the names of Josiah Phillips, Levy Sykes, and John Ashley.⁵⁸ Lt. Wilson closes his letter by requesting that Williamsburg offer a reward of \$150 to anyone who can bring in one of the three principals to a magistrate.⁵⁹ The same day that John Wilson’s letter was received in Williamsburg, Governor Patrick Henry declared Josiah Phillips outlawed as a “Traitor to the State.”⁶⁰

Exactly why Josiah Phillips decided to resume his raids in Norfolk and Princess Anne is unknown. It is possible that he was instructed by Lord Dunmore to continue fighting for the crown. It is also possible that when Dunmore left, Phillips took it upon himself to continue the fight against the patriots, believing that when the British ultimately emerged victorious he would be rewarded. Another possibility is that he was just taking advantage of the chaos of war, acting more as a criminal than a loyalist. It is interesting to note,

⁵⁵Ibid

⁵⁶ The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia 9 (1776), May 28, 1776, page 143

⁵⁷ Virginia, and H. R. McIlwaine. 1931. *Journals of the Council of the state of Virginia*. Richmond: Division of purchase and printing, Vol 1, June 20th, 435.

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Virginia, and H. R. McIlwaine. 1931. *Journals of the Council of the state of Virginia*. Richmond: Division of purchase and printing, Vol 2, Jan 3 1778.

however, that two of the three leaders of this growing insurrection lived in St. Bride's Parish in 1771, and Levy Sykes was a longtime resident of the parish.

St. Bride's Parish lies right on the boundary of the "secret places" where Lt. Wilson mentioned the insurgency was developing. Phillips chose the safety of the Great Dismal Swamp as the headquarters for his movement, an area which he likely knew well from years past. In the fall of 1777, a traveler named Elkanah Watson reported that he "travelled near the North border of the Great Dismal Swamp, which, at this time, was infested by concealed royalists, and runaway negroes, who could not be approached with safety. They often attacked travelers, and had recently murdered a Mr. Williams."⁶¹

As 1777 came to a close, loyalists throughout Tidewater must have had a feeling of resurgent hope because in early December, a British fleet sailed back into the Chesapeake Bay. The appearance of the fleet brought the spotlight of the war back to Norfolk and Princess Anne. Williamsburg became so worried that loyalists in Tidewater would provide intelligence to the British fleet that the Governor and the Committee for Public Safety began "removing and restraining" loyalist families throughout the region.⁶²

Perhaps the hope brought by the British fleet encouraged Josiah Phillips to be more brazen in his actions, or perhaps the increased attention from Williamsburg led to increased efforts to find Phillips. Either way at some point in December 1777, Josiah Phillips was captured by Lieutenant William Poythress. Apparently "a free Mullato" interested in collecting some reward money informed Poythress of Phillips' location, and Lt. Poythress was able to lead a successful mission to capture Phillips. On January 3rd, Patrick Henry instructed the treasurer to pay Lt. Poythress 55 pounds and noted that 10 pounds must be paid to the "free Mullato" informant.⁶³

Exactly what happened between January 3rd, 1778 when the rewards for Phillips' capture were sent out and May 1st is a mystery, but what is clear is that on May 1st, Governor Patrick Henry learned that he had a major problem on his hands. According to the Journal of the Council of the State of Virginia on May 1st, "the Governor laid before the Board a letter from Colonel Muter informing him that [Josiah] Phillips the noted Traitor has again

⁶¹ Watson, Elkanah, and Winslow C. Watson, *Men and times of the revolution ; or, Memoirs of Elkanah Watson, including journals of travels in Europé and America, from 1777 to 1842, with his correspondence with public men and reminiscences and incidents of the revolution*. New York: Dana, 1973, 36.

⁶² Bill Indemnifying the Executive for Removing and Confining Suspected Persons, [16–26 December 1777], "Founders Online, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/01-02-02-0037>. [Original source: *The Papers of Thomas Jefferson*, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, p. 119.

⁶³ Virginia, and H. R. McIlwaine. 1931. *Journals of the Council of the state of Virginia*. Richmond: Division of purchase and printing, Vol 2, January 3rd, 1778.

made insurrection in Princess Anne County at the head of fifty men.”⁶⁴ The most likely scenario is that Phillips, with the help of his men, was able to break out of prison at some point during the winter of 1778. Regardless of how he got free this information must have greatly alarmed both Governor Henry and the Council of State.

In response to Colonel Muter’s letter, the Governor ordered immediate action. First, he commanded 100 men from the Nansemond Militia immediately travel to Princess Anne to aid Colonel Thomas R. Walker, who was already raising a force to fight Phillips. Next, he issued a \$500 reward to whomever could bring Josiah Phillips in, either dead or alive. Finally, to sweeten the reward even more, Governor Henry authorized whoever captured Josiah Phillips to divide up whatever “booty” Phillips had collected and divide it amongst themselves.⁶⁵

Patrick Henry had to wait almost three weeks before he got an update on the situation in Princess Anne, and it was not the update he wanted. This time the letter was from Colonel John Wilson, and he wrote the governor saying “A few days since, hearing of the ravages committed by Philips and his notorious gang, I ordered fifty men to be raised out of four companies, consisting of upward of two hundred; of those only ten appeared.”⁶⁶ Wilson told the Governor that either out of fear or apathy, the men simply refused to go after Josiah Phillips, electing instead to pay a 5 shilling penalty.

When Colonel Wilson realized that he was not going to raise the force he desired, he tried a different tact. This time he “compelled twenty others into duty, putting them under the command of Capt. Josiah Wilson, who pursued, but to no purpose: [Phillips and his men] were either taken to their secret places in the swamps, or concealed by their friends, that no intelligence could be obtained.”⁶⁷ At this point it started becoming clear to John Wilson that the only hope for capturing Phillips lay in the men from the Nansemond militia. Wilson described his men to Henry saying “for such is their cowardly disposition, joined to their disaffection, that scare a man, without being forced, can be raised to go after the outlyers.”⁶⁸

By late May, Josiah Phillips wielded such power and commanded such fear, that no one had any interest in pursuing him. The fate of Captain Josiah Wilson, who led the force in search of Phillips, helps us understand why. In his letter to Governor Henry, Colonel John Wilson laments, “We have lost Capt. Wilson since his return: having some private business at a neighbour’s, within a mile of his own house, he was fired on by four men

⁶⁴ Virginia, and H. R. McIlwaine. 1931. *Journals of the Council of the state of Virginia*. Vol 2, May 1st, 1778.

⁶⁵ Ibid

⁶⁶ Wirt, W. (1852). *Sketches of the life and character of Patrick Henry*. 15th ed., cor. by the author. Hartford: S. Andrus & son, 235.

⁶⁷ Wirt, W, *Sketches of the life and character of Patrick Henry*, 235.

⁶⁸ Ibid

concealed in the house, and wounded in such a manner that he died in a few hours.”⁶⁹ Colonel Wilson goes on to solemnly declare that “this will surely be the fate of a few others” if the people of Tidewater do not get more help from Williamsburg.⁷⁰

Just four days later Governor Henry would receive even worse news from Colonel John Wilson. Wilson informed the governor that of the 100 men from the Nansemond Militia that were ordered to help capture Phillips, only 50 arrived in Norfolk. To make matters worse, five left immediately, most likely right after they heard what their mission was, and the remaining 45 only stayed for two days. John Wilson’s last hope, the Nansemond Militia, had come up short.⁷¹

With this latest report, Governor Henry had had enough, and he began what he saw as his last resort – asking the House of Delegates for help. On May 27th, Henry sent a desperate letter to Benjamin Harrison, the speaker of the House of Delegates. The governor begins by saying “Sir, I was always unwilling to trouble the general assembly with anything that seemed of too little consequence for deliberation.”⁷² Henry goes on to describe the situation in Princess Anne County and his previous efforts to apprehend Josiah Phillips. He then explains John Wilson’s plan for “the removal of such families as are in league with the insurgents.”⁷³ Henry, however, tells Benjamin Harrison that he believes the executive does not have the power to do such a thing, and he writes “I must beg leave to submit the whole matter to the assembly, who are the only judges how far the methods of proceeding directed by law are to be dispensed on this occasion.”⁷⁴

Patrick Henry goes on to tell Harrison that he believes such drastic measures in this case are necessary. He writes that “an apparent disposition to disturb the peace of this state has been manifested by these people during the whole course of the present war. It seems, therefore, that no effort to crush these desperadoes should be spared.” Governor Henry closes the letter by saying “My duty would no longer suffer me to withhold these several matters from the view of the general assembly, to whom I beg leave to refer them through you.”⁷⁵

Benjamin Harrison must have perceived the desperation in Patrick Henry’s letter because not only did he carry the matter to the assembly, but the very next day Thomas Jefferson, a well-respected leader of the assembly submitted the “Bill to Attaint Josiah Phillips and Others.”⁷⁶

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Wirt, W, *Sketches of the life and character of Patrick Henry*, 236.

⁷² Wirt, W, *Sketches of the life and character of Patrick Henry*, 237.

⁷³ Wirt, W, *Sketches of the life and character of Patrick Henry*, 237-8.

⁷⁴ Ibid

⁷⁵ Ibid

⁷⁶ Bill to Attaint Josiah Philips and Others, [28 May 1778],” *Founders Online*, National Archives

An Attainder, An Arrest, and An Execution

Bills of Attainder have a history in British Common Law and were used with some frequency during the Revolutionary War. Most of the time, these bills were used to confiscate the land of known loyalists and to expel them from the state. In 1776, Pennsylvania attainted 490 loyalists, while in 1779 New York attainted 60 people for being loyal to George III, and over the course of the war they would issue attainders for over a thousand loyalists.⁷⁷

The Bill to Attaint Josiah Phillips, however, was much more severe and much more radical than those used in New York, Pennsylvania, and Massachusetts. Jefferson's Bill of Attainder after all convicted Phillips of high treason, and declared that Phillips and any of his known associates should be killed.

Thomas Jefferson was not a proponent of Bills of Attainder. In his notes on British Common Law statutes, Jefferson even listed Bills of Attainder as something "doubtful whether to be retained [in the new independent Virginia]."⁷⁸ There was also the question of whether or not the Bill of Attainder violated Virginia's Declaration of Rights. While the Declaration of Rights does not specifically prohibit Bills of Attainder, there was certainly debate over whether Jefferson's bill violated the principles of the Declaration. Finally there was the question of whether Bills of Attainder were oversteps by the legislative branch of the government and that judgements of guilt or innocence should be left to the judicial branch.

According to Thomas Jefferson, the bill was necessary to bring Josiah Phillips to justice. In a letter to Patrick Henry's biographer, William Wirt, Thomas Jefferson explained that "Mr. Henry, the Governor, communicated the case to me, we both thought the best proceeding would be by Bill of Attainder, unless [Phillips] delivered himself up for trial within a given time."⁷⁹

Jefferson must have made the calculated decision that the Writ or Bill of Attainder was required to stop the threatening insurrection in Princess Anne County, and the rest of the General Assembly must have agreed because the bill was read by the assembly three times in one day, and it was passed to the Senate on May 30th. The Senate also moved rapidly approving the bill without amendment by June 1st.⁸⁰

⁷⁷ Levy, Leonard W. 2001. *Origins of the Bill of Rights*. New Haven: Yale Univ. Press, 73.

⁷⁸ Jefferson's Notes of English Statutes, 1779," *Founders Online*, National Archives.

⁷⁹ Thomas Jefferson to William Wirt, 14 August 1814," *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/03-07-02-0403>. [Original source: *The Papers of Thomas Jefferson*, Retirement Series, vol. 7, 28 November 1813 to 30 September 1814, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2010, pp. 544–551.

⁸⁰ Wirt, W, *Sketches of the life and character of Patrick Henry*, 239.

The haste with which both the General Assembly and the Senate acted on Jefferson's bill shows that Williamsburg saw Josiah Phillips and his insurrection as a credible threat that needed to be dealt with immediately. Despite the questionable legality of the bill and the controversy the bill stirred, both houses of the legislative branch moved quickly in the hopes of extinguishing the danger in Tidewater.

Controversy aside, Jefferson's bill was quite simple. Josiah Phillips had been accused of high treason, and if he did not turn himself in by the end of June, he would be automatically found guilty of his crime at which point he would be condemned to death. Also once the bill expired, anyone who came across Josiah Phillips or any of his associates was permitted to kill them on the spot.⁸¹

As Patrick Henry was receiving bad news after bad news and preparing to ask the General Assembly for help, the situation in Princess Anne County began to develop as well. A May 21st court document, tells how a man named Cornelius Land "harbored and entertained William Wilbur thinking him to be one of Philips's Gang, or what is commonly called the Green-Brier Company; and informed said Wilbur that in a short time the fleet would be in in order to subdue the Rebels, and said that he knew where Philips's Company lodged, for that they so often came to his house and he had at times supplied them with Provision, and that those who joined the said Philips were in the Right."⁸² Land was charged with "inclinations unfriendly to the American Cause, and show[ing] a disposition to aid and abet the enemy if the opportunity permits."⁸³ A warrant for his arrest was subsequently issued.⁸⁴

The Cornelius Land incident is interesting on several levels. First it confirms the level of support that Josiah Phillips was receiving from other local loyalists. Land's defense of Phillips and his men along with his active support of the insurgency sheds light on just how challenging it must have been to find and capture Phillips. It also suggests that Phillips may have had actual loyalist sympathies, as opposed to the common criminal picture of him that was soon to be painted in Williamsburg. It is hard to imagine a local loyalist claiming that Phillips and his men were "in the right", if they were nothing more than highway robbers. Finally it is interesting to consider what level of military intelligence that local loyalists had. Land's claim about the British fleet returning to the Chesapeake Bay would actually come true the following year when the British would launch a brief invasion of Fort Nelson and Gosport.⁸⁵

⁸¹ Bill to Attaint Josiah Philips and Others, [28 May 1778],” *Founders Online*, National Archives.

⁸² Creecy, John Harvey, ed, *Virginia Antiquary: Princess Anne County Loose Papers 1700-1789*, 92-3.

⁸³ *Ibid*

⁸⁴ *Ibid*

⁸⁵ Hast, Adele, *Loyalism in Revolutionary Virginia: The Norfolk Area and the Eastern Shore*, Chapter 5.

By June 5th, Josiah Phillips had probably received word about Thomas Jefferson's Bill of Attainder. That day Alexander Purdie's *Virginia Gazette* published a list of bills passed by the legislature, including "An act to attain Josiah Philips and others, unless they render themselves to justice within the meantime."⁸⁶ While Phillips may not have known the specifics of the Bill at this point, it is possible that someone in his support network had alerted him to Williamsburg's latest efforts to bring him in to custody.

Knowing that the legislative branch of the government had gone to such great lengths to stop him, must have been disconcerting for Josiah Phillips. Finding out that if he did not turn himself in not only would he be declaring his own guilt but that he was also accepting his own condemnation had to have weighed on Phillips. With the clock now ticking toward June 30th, Josiah Phillips had a decision to make.

Unfortunately, or perhaps fortunately, we will never know what would have happened if June 30th came and went and open hunting season on Phillips and his associates was declared because on June 6th, the day after Virginia heard about Jefferson's bill, Josiah Phillips appeared in a Princess Anne County courtroom. Details of the arrest are lacking, but the historical record confirms that at some point in the middle of the night a volunteer company commanded by Captain Amos Weeks took Josiah Phillips into custody somewhere in Norfolk County.⁸⁷ In court, the Judge, Peter Singleton, ordered the Sheriff to immediately take Josiah Phillips to jail, where Phillips would await his trial.⁸⁸

Tensions at the Princess Anne County jail must have been running high leading up to Phillips' June 11th court appearance. Phillips, having already escaped jail once and having his large insurgent force in the nearby Great Dismal Swamp, certainly was a major risk to incarcerate. Nevertheless, on June 11th, Josiah Phillips, along with fellow St. Bride's Parish resident James Hodges, were walked into the courtroom of Princess Anne County, where they faced a trial.⁸⁹

Phillips and Hodges were "led to the Bar in the Custody of the Sheriff."⁹⁰ They faced a felony charge of "Feloniously Robbing the Continent of America of Sundry Goods".⁹¹ Specifically they were accused of stealing "Twelve Pieces of Linen Fourteen Pieces of Bunting Twelve Gross of Coat and Waist Cost Buttons Twenty Eight Hats and Seven Muskits."⁹² The total value of the stolen goods was said to be "of the Value of Three

⁸⁶ Purdie, Alexander. *The Virginia Gazette*. Williamsburg [Va.], June 5th, 1778.

⁸⁷ Virginia, and H. R. McIlwaine. 1931. *Journals of the Council of the state of Virginia*. Vol 2, November 5 1778; Purdie, Alexander. *The Virginia Gazette*, June 19th, 1778.

⁸⁸ Creecy, John Harvey, ed, *Virginia Antiquary: Princess Anne County Loose Papers 1700-1789*, 92.

⁸⁹ Virginia. County Court (Princess Anne County). 1949. *County Court minute books and processions' returns, 1709-1861 [Virginia Beach, Virginia]*. Richmond [Virginia]: Filmed by the Virginia State Library. Minute Book 10, June 11th, 1778.

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

Hundred Pounds.”⁹³ Phillips and Hodges were also accused of “Robbing John Cocke of Fifty weight of lead and half of Powder of the Value of Ten Pounds.”⁹⁴ Both Josiah Phillips and James Hodges pled not guilty to the charge of felony robbery.⁹⁵

The court decided that the best course of action was to let those in Williamsburg take over from this point. The minute book states that “It is the Opinion of the Court that they ought to be Tried for the said Offense at the next General Court of Court of Oyer and Terminer and thereupon they are Remanded to Jail for trial.”⁹⁶ Further illustrating the high stakes of the trial, fourteen witnesses “entered into recognizance in one thousand pounds each to make their personal appearance before the next Honorable General Court or Court of the Oyer and Terminer then and there to give evidence on behalf of the Commonwealth against Josiah Phillips and James Hodges.”⁹⁷

It is important to note that none of the charges or the court proceedings at this point mention Jefferson’s Bill of Attainder. Phillips and Hodges were being charged with robbery, not high treason. The list of items stolen is also interesting. Everything stolen had some military application – uniforms, muskets, gunpowder, and lead. This was not some random highway robbery aimed with the goal of plunder. This was a targeted attack on patriot military supplies. Phillips was soon to be made out to be a mere bandit or a desperado by those in Williamsburg, but the evidence certainly still points to the possibility that he believed he was acting in support of the crown.

Five days after appearing before the Princess Anne County Court, Josiah Phillips arrived in Williamsburg. According to Alexander Purdie’s *Virginia Gazette*, “Last Tuesday the noted Josiah Philips and James Hodges were safely lodged in the publick jail by the sheriff of Princess Anne. They were taken the 4th instant, at night, in Norfolk County, with three others of the gang, who are soon expected here likewise.”⁹⁸

The fact the Josiah Phillips and other leaders of his insurgency were sitting in a jail cell in Williamsburg still did not set the minds of those in Princess Anne and Norfolk at ease. They were still scared of the power that Phillips wielded and terrified by the idea of his escape. On July 20th, the Council of State received a “A Petition signed by a number of Inhabitants of the Counties of Princess Anne and Norfolk praying that a strong and sufficient Guard may be kept over Phillips and the rest of the Prisoners of his daring

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Virginia. County Court (Princess Anne County). 1949. *County Court minute books and processioners' returns, 1709-1861 [Virginia Beach, Virginia]*. Richmond [Virginia]: Filmed by the Virginia State Library. Minute Book 10, June 11th, 1778

⁹⁷ Ibid

⁹⁸ Purdie, Alexander. *The Virginia Gazette*. Williamsburg [Va.], June 19th, 1778

Party of Robbers.”⁹⁹ The Council must have agreed that even in jail Josiah Phillips still posed a threat to the Commonwealth because they advised Governor Henry to increase the number of sentries at the jail to four and to order the jailer to keep a “strict watch over said Prisoners.”¹⁰⁰ Governor Henry agreed and immediately made the order to ensure Josiah Phillips stayed in the Williamsburg jail.¹⁰¹

On October 20th, 1778, over four months after Phillips arrived in Williamsburg, the General Court of Virginia convened to hear his case. The official records of the Phillips trial were lost when Richmond burned during the Civil War, however, thanks to Patrick Henry’s first biographer, William Wirt, transcriptions of the original records have been preserved in Sketches of the Life and Character of Patrick Henry. Wirt, believing that the exact details of this controversial case would be important to history, added an appendix to his biography of Patrick Henry containing the full court records.¹⁰²

Upon entering the court room Josiah Phillips “late of the Parish of Lynnhaven, in the county of Princess Anne, laborer”, heard the charges against them. The General Court charges were slightly different than the charges he faced in Princess Anne County. Instead of charging Phillips with “robbing the continent of America”, he was charged with robbing a man named James Hargrove, one of the witnesses that had promised the Princess Anne Court he would appear before the General Court.¹⁰³ According to Hargrove, on May 9th, Josiah Phillips approached while he was traveling along the highway, and “feloniously did make assault on him.”¹⁰⁴ Hargrove said that Phillips robbed him of “twenty-eight men’s felt hats of the value of twenty shillings each, and five pounds of twine of value of five shillings each pound.”¹⁰⁵ After hearing the testimony of James Hargrove and five other corroborating witnesses, the court indicted Josiah Phillips of robbery.¹⁰⁶

Why Josiah Phillips was charged with this relatively minor robbery as opposed to high treason is worth noting. According to Thomas Jefferson, Edmund Randolph, the Attorney General, believed the Phillips would “plead that he was a British subject, taken in arms, in support of his lawful sovereign, and as a prisoner of war entitled to the protection of the law of nations.”¹⁰⁷ Randolph, Jefferson says, “thought the safest proceeding would be to indict him at Common law as a felon and a robber.”¹⁰⁸ Apparently, Edmund Randolph

⁹⁹ Virginia, and H. R. McIlwaine, *Journals of the Council of the state of Virginia*. Vol 2, July 20th, 1778.

¹⁰⁰ Virginia, and H. R. McIlwaine, *Journals of the Council of the state of Virginia*. Vol 2, July 20th, 1778

¹⁰¹ Ibid

¹⁰² Wirt, W, *Sketches of the life and character of Patrick Henry*,466.

¹⁰³ Wirt, W, *Sketches of the life and character of Patrick Henry*,465-466.

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ Thomas Jefferson to William Wirt, 14 August 1814,” *Founders Online*, National Archives

¹⁰⁸ Ibid

believed that the safest way to rid Virginia of Josiah Phillips was through the slam dunk James Hargrove robbery charge, since robbery was a capital offense in those days.

Later in the day of October 20th, Josiah Phillips appeared before court again. According to the records, Phillips, “who stands indicted for robbery, was led to the bar in the custody of the keeper of the public jail, and was thereof arraigned, and pleaded not guilty to the indictment, and for his trial put himself upon God and country.”¹⁰⁹ While it is not represented in the General Court records, we know from later descriptions of the trial by both Thomas Jefferson and Edmund Randolph, that Josiah Phillips did in fact tell the court that he was a British subject. He went on to tell the court that he had been commissioned by Lord Dunmore, and that his actions were in support of the British crown. In a critique of the Bill of Attainder, Edmund Randolph would later admit that “Phillips had a commission in his pocket at that time. He was, therefore only a prisoner of war.”¹¹⁰ Exactly what time Randolph is referring to unclear, we do not know if he was talking about the time of the trial or the time the Attainder was issued, but what is clear is that Randolph knew Josiah Phillips possessed a commission from Lord Dunmore.

Ultimately the court decided that fighting for the British crown was no excuse to commit robbery. The transcriptions of the court records reveal that the jury “having heard the evidence, upon their oath do say, that the said Josiah Philips is guilty of robbery aforesaid in manner and form as in the indictment against him is alleged, and that he had neither lands nor tenements, goods nor chattels at the time of committing the said robbery, nor at any time since, to their knowledge; and thereupon he is remanded to jail.”¹¹¹

A week later Josiah Phillips was led back down Duke of Gloucester Street to the General Court to learn his fate. Upon arriving before the judge, Phillips was asked “if anything he had or knew to say for himself, why the court, here, to judgement and execution of and upon the premises, should not proceed.”¹¹² Phillips told that judge that “he had nothing but what he had before said.”¹¹³ The court responded by ordered that Josiah Phillips “be hanged by the neck until he be dead.”¹¹⁴

The next day, the General Court convened once more to schedule Phillips’ execution. Josiah Phillips along with his associates James Hodges, Henry McLellan, and Robert Hodges were to be executed “by the sheriff of York county, on Friday the fourth day of

¹⁰⁹ Wirt, W, *Sketches of the life and character of Patrick Henry*, 466

¹¹⁰ Elliot, Jonathon, comp. *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3

¹¹¹ Wirt, W, *Sketches of the life and character of Patrick Henry*, 466.

¹¹² Wirt, W, *Sketches of the life and character of Patrick Henry*, 467.

¹¹³ Ibid

¹¹⁴ Wirt, W, *Sketches of the life and character of Patrick Henry*, 467

December next, between the hours of ten and twelve in the forenoon, at the usual place of execution.”¹¹⁵

On October 30th, 1778 Alexander Purdie’s *Virginia Gazette* reported on “the trial of sundry prisoners from the public jail.” The article revealed to the public that “Josiah Philips, James Hodges, Robert Hodges, and Henry McClanen, from Princess Anne [convicted] for robbing publick wagons (and who were accused of murder, treason, and sundry other outrage) were capitally convicted.”¹¹⁶

Finally, on the afternoon of December 4th, Dixon and Hunter’s *Virginia Gazette* reported that “This day were executed at the gallows near this city, pursuant to their sentence, the following criminals, viz. Josiah Phillips, Henry McClanen, Robert Hodges, John Reasor, and Josiah Blankenship.”¹¹⁷ After three years of reigning terror on Tidewater and fighting in support of the British crown, Josiah Phillip, a laborer from Princess Anne County who became Virginia’s most notorious criminal, was dead.

Aftermath in Tidewater

As Josiah Phillips was sitting in a Williamsburg jail cell, the Commonwealth of Virginia began paying out the rewards for his capture. The biggest of the rewards went to the volunteer company that captured Phillips. On November 5th, “A warrant was issued for One hundred and fifty pounds payable to M’ John Thoroughgood for the use of a Voluntier Company commanded by Captain Amos Weeks being the reward offered by Government for apprehending Josiah Philips”.¹¹⁸

A couple of days before Weeks’ company was paid, John Wilson also requested that a man named Zadock Dailey be paid for his role in killing a known associate of Josiah Phillips. According to Wilson’s letter, “Will, a negro man slave, was aiding and abetting Josiah Phillips and his accomplices, in the preparation of their wicked and traitorous actions: that the said slave struck terror into the inhabitants of the counties of Norfolk and Princess Anne”.¹¹⁹ Wilson then explains that “one Zadock Dailey did accordingly kill him, whereby the country was saved from the expense of sending troops to quell the insurgents.”¹²⁰ John Wilson closes the letter by petitioning that Dailey receive a reward of 100 pounds.

¹¹⁵ Ibid

¹¹⁶ Purdie, Alexander. *The Virginia Gazette*. Williamsburg [Va.], October 30th, 1778.

¹¹⁷ Dixon, John and William Hunter. *The Virginia Gazette*. Williamsburg [Va.], December 4th, 1778.

¹¹⁸ Virginia, and H. R. McIlwaine, *Journals of the Council of the state of Virginia*. Vol 2, November 5, 1778.

¹¹⁹ Virginia, *Journal of the House of Delegates of the Commonwealth of Virginia*. [Richmond]: [Printed by Thomas Whites], November 2, 1778.

¹²⁰ Ibid

Interestingly, Zadock Dailey had already leveraged his involvement in helping bring Phillips and his associates to justice. Dailey along with another man named Caleb Powers had deserted Captain Thomas Bressie's company of state troops. In their defense, John Wilson wrote Patrick Henry asking for them to be pardoned and discharged because of the "great service they have rendered the country by taking and killing several of the noted Phillip's gang of Robbers."¹²¹ Patrick Henry did pardon the men, but said that only the legislature could pay them any reward they deserved for their help with Josiah Phillips.

Despite having lost its leader, the insurrection continued in the swamps of southeastern Virginia long after the execution of Josiah Phillips. As the fight against the British was coming to a close, Colonel Thomas Newton wrote to then Governor, Benjamin Harrison, in August of 1782 saying that many of Phillip's former crew "out in the Swamps are anxious to come in – The general opinion is that if a pardon were offered to all but them, and a reward given to arrest 'Levi Sikes and Robert Stewart the great offenders,' the whole nest would be broken up."¹²² Even without their leader the loyalists of the Great Dismal Swamp continued their raids in support of the British up until the very end, and up until the very end Williamsburg would have to continue to figure out ways to deal with them.

The Phillips' insurrection and its repercussions would reverberate through Tidewater for several years.

Legacy of the Attainder

Not only would Phillips' insurrection continue to plague Virginians for years after his death, but the methods used to stop Phillips would come back to haunt those involved for decades.

In June of 1788, during debates over the Constitution, Edmund Randolph invoked the Phillips' Attainder, castigating all those involved with it. He said "there is one example of this violation in Virginia, of a most striking and shocking nature — an example so horrid, that, if I conceived my country would passively permit a repetition of it, dear as it is to me, I would seek means of expatriating myself from it."¹²³ He went on to describe the circumstances, claiming:

¹²¹ Virginia. Governor., McIlwaine, H. R. (Henry Read)., Virginia State Library. *Official Letters of the Governors of the State of Virginia*. Richmond: D. Bottom, Superintendent of public printing, August 25, 1778.

¹²² Virginia., Flournoy, H. W., Colston, R. Edward., McRae, S., Palmer, W. Pitt. *Calendar of Virginia state papers and other manuscripts*. Richmond, August 9, 1782.

¹²³ Elliot, Jonathan, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3.

“Phillips was attainted very speedily and precipitately, without any proof better than vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed. Was this arbitrary deprivation of life, the dearest gift of God to man, consistent with the genius of a republican government? Is this compatible with the spirit of freedom? This, sir, has made the deepest impression on my heart, and I cannot contemplate it without horror.”¹²⁴

Patrick Henry then chimed in to defend the Attainder saying:

“He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. Nor was he a Socrates. He was a fugitive murderer and an outlaw — a man who commanded an infamous banditti, and at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name. Those who declare war against the human race may be struck out of existence as soon as they are apprehended.”¹²⁵

Henry went on to say that:

“I am truly a friend to legal forms and methods; but, sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations.”¹²⁶

This triggered another response from Edmund Randolph, who fired back that:

“I shall take that liberty in reprehending the wicked act which attainted Josiah Phillips. Because he was not a Socrates, is he to be attainted at pleasure? Is he to be attainted because he is not among the high of reputation? After the use the gentleman made of a word innocently used to express a crowd, I thought he would be careful himself. We are all equal in this country.”¹²⁷

Randolph continued to say:

“We all agree that he was an abandoned man. But if you can prepare a bill to attain a man, and pass it through both houses in an instant, I ask you, who is safe? There is no man on whom a cloud may not hang some time or other, if a demagogue should think proper to take advantage of it to his destruction.”¹²⁸

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Elliot, Jonathan *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3.

¹²⁷ Ibid

¹²⁸ Ibid

He then finished with the dramatic claim that:

“Phillips had a commission in his pocket at that time. He was, therefore, only a prisoner of war. This precedent may destroy the best man in the community, when he was arbitrarily attainted merely because he was not a Socrates.”¹²⁹

At this point Benjamin Harrison approached the chair urging caution:

“The accusation of the General Assembly, with respect to Josiah Phillips, was very unjust; that he was a man who, by the laws of nations, was entitled to no privilege of trial, &c.; that the Assembly had uniformly been lenient and moderate in their measures; and that, as the debates of this Convention would probably be published, he thought it very unwarrantable to utter expressions here which might induce the world to believe that the Assembly of Virginia had committed murder.”¹³⁰

At this point a delegate named George Nicholas chimed in grabbing the last word for the moment:

“the turpitude of a man’s character was not a sufficient reason to deprive him of his life without a trial; that such a doctrine as that was a subversion of every shadow of freedom; that a fair trial was necessary to determine whether accusations against men’s characters were well-founded or not; and that no person would be safe, were it once adopted as a maxim, that a man might be condemned without a trial.”¹³¹

The heated debate over the legality over the Bill of Attainder would continue into the 19th century, as those involved persisted to defend their actions. In an August 1814 letter to William Wirt, Thomas Jefferson told him that “The censure of Mr. E. Randolph on Mr. Henry in the case of Phillips, was without foundation.”¹³² He continued saying, “Phillips was a mere robber, who availing himself of the troubles of the times, collected a banditti, retired to the Dismal Swamp, and from thence sallied forth, plundering and maltreating the neighboring inhabitants.”¹³³

In a subsequent letter to William Wirt, Jefferson continued defending his actions. Jefferson wrote on May 12th, 1815 that “I was then thoroughly persuaded of the correctness of the proceeding, and am more and more convinced by reflection. If I am in

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Elliot, Jonathan *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*. Vol. 3.

¹³² Thomas Jefferson to William Wirt, 14 August 1814,” *Founders Online*, National Archives

¹³³ Ibid

error, it is an error of principle,”¹³⁴ He went on to say that, “I know of no substitutes for the process of outlawry, so familiar to our law, or to it’s kindred process by act of attainder, duly applied, which could have reached the case of Josiah Phillips.”¹³⁵

Just two months earlier, Thomas Jefferson wrote historian Louis Girardin also defending his actions in the Phillips’ case. Jefferson explained to Girardin that while Bills of Attainder had been abused in England that “proper office of a Bill of Attainder is this. When a person, charged with a crime, withdraws from justice, or resists it by force, either in his own or a foreign country, no other means of bringing him to trial or punishment being practicable, a special act is passed by the legislature.”¹³⁶ He continued to explain that the whole purpose of the Bill of Attainder was to bring Josiah Phillips to justice, which he believed it had. Jefferson also told Girardin that once Phillips was apprehended, he agreed with Edmund Randolph’s decision to try him based on Common Law.

Almost forty years after his execution, the notorious Princess Anne loyalist was still coming back to haunt the titans of Virginia politics.

Perhaps the Attainder’s ultimate legacy though is contained in the United States Constitution. Article 1 Section 9 of the Constitution boldly proclaims that “No Bill of Attainder or ex post facto Law shall be passed.”¹³⁷ Section 9 is then followed by Section 10 which prohibits any state from passing a Bill of Attainder.

We do not know if it was the Phillips’ Attainder directly prompted these two lines in the federal constitution, but it is safe to assume the Thomas Jefferson’s Attainder of a Princess Anne County laborer and notorious loyalist was at least discussed as those two sections were penned into immortality.

¹³⁴ Jefferson to William Wirt, 12 May 1815,” *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/03-08-02-0389>. [Original source: *The Papers of Thomas Jefferson*, Retirement Series, vol. 8, *1 October 1814 to 31 August 1815*, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2011, pp. 483–484

¹³⁵ *Ibid*

¹³⁶ William Wirt to Thomas Jefferson, 15 March 1815,” *Founders Online*, National Archives, version of January 18, 2019, <https://founders.archives.gov/documents/Jefferson/03-08-02-0276>. [Original source: *The Papers of Thomas Jefferson*, Retirement Series, vol. 8, *1 October 1814 to 31 August 1815*, ed. J. Jefferson Looney. Princeton: Princeton University Press, 2011, p. 351

¹³⁷ U.S. Constitution, Article 1, Section 9