

To prevent any Doubts that might arise from Lieutenant-General Burgoyne's Name not being mentioned in the above Treaty, Major-General Gates hereby declares that he is understood to be comprehended in it as fully as if his Name had been specifically mentioned.

Horatio Gates.

N^o IX.

Minutes of a Council of War, held on the Heights of Saratoga, October 12th, 1777.

P R E S E N T

Lieut. Gen. Burgoyne, Major Gen. Phillips.
Major Gen. Reidefel, Brigadier Gen. Hamilton.

THE Lieutenant-General states to the Council the present Situation of Affairs.

The Enemy in Force, according to the best Intelligence he can obtain, to the Amount of upwards of Fourteen Thousand Men, and a considerable Quantity of Artillery are on this Side the Fish-Kill, and threaten an Attack. On the other Side the Hudson's River, between this Army and Fort Edward, is another Army of the Enemy, the Numbers unknown; but one Corps, which there has been an Opportunity of observing, is reported to be about Fifteen Hundred Men. They have likewise Cannon on the other Side the Hudson's River, and they have a Bridge below Saratoga Church, by which the two Armies can communicate.

The Batteaux of the Army have been destroyed, and no Means appear of making a Bridge over the Hudson's River, were it even practicable from the Position of the Enemy.

The only Means of Retreat, therefore, are by the Ford at Fort Edward, or taking the Mountains in order to pass the River higher up by Rafts, or by another Ford which is reported to be practicable with Difficulty, or by keeping the Mountains, to pass the Head of Hudson's River, and continue to the Westward of Lake George all the Way to Ticonderoga; it is true this last Passage was never made but by Indians or very small Bodies of Men.

In order to pass Cannon or any Wheel Carriages from hence to Fort Edward, some Bridges must be repaired under Fire of the Enemy from the opposite Side of the River; and the principal Bridge will be a Work of Fourteen or Fifteen Hours; there is no good Position for the Army to take to sustain that Work, and, if these were, the Time stated as necessary would give the Enemy on the other Side the Hudson's River an Opportunity to take Post on the strong Ground above Fort Edward, or to dispute the Ford while General Gates's Army followed in the Rear.

The Intelligence from the lower Part of Hudson's River is founded upon the concurrent Reports of Prisoners and Deserters, who say it was the News in the Enemy's Camp, that Fort Montgomery was taken; and one Man, a Friend to Government, who arrived Yesterday, and mentions some Particulars of the Manner in which it was taken.

The Provisions of the Army may hold out to the 20th; there is neither Rum nor Spruce Beer.

Having committed this State of Facts to the Consideration of the Council, the General requests their Sentiments on the following Propositions:

- 1st. To wait in the present Position an Attack from the Enemy, or the Chance of favourable Events.
- 2d. To attack the Enemy.
- 3d. To retreat repairing the Bridges as the Army moves for the Artillery, in order to force the Passage of the Ford.
- 4th. To retreat by Night, leaving the Artillery and the Baggage; and should it be found impracticable to force the Passage with Musquetry, to attempt the upper Ford, or the Passage round Lake George.
- 5th. In case the Enemy, by extending to their Left, leave their Rear open, to march rapidly for Albany.

Upon the First Proposition resolved, That the Situation would grow worse by Delay, that the Provision now in Store not more than sufficient for the Retreat should Impediments intervene, or a Circuit of Country become necessary; and as the Enemy did not attack when the Ground was unfortified, it is not probable they will do it now, as they have a better Game to play.

The Second unadvisable and desperate, there being no Possibility of reconnoitring the Enemy's Position, and his great Superiority of Numbers known.

The Third impracticable.

The Fifth thought worthy of Consideration by the Lieutenant General, Major General Phillips, and Brigadier General Hamilton; but the Position of the Enemy yet gives no Open for it.

Resolved that the Fourth Proposition is the only Resource, and that to effect it, the utmost Secrecy and Silence is to be observed; and the Troops are to be put in Motion from the Right in the still Part of the Night, without any Change in the Disposition.

N. B. It depended upon the Delivery of six Days Provision in due Time, and upon the Return of Scouts, who had been sent forward, to examine by what Route the Army could probably move the first Four Miles undiscovered, whether the Plan should take Place on that Day, or on the Morrow.

The Scouts on their Return reported, that the Enemy's Position on our Right was such, and they had so many small Parties out, that it would be impossible to move without our March being immediately discovered.

Minutes and Proceedings of a Council of War, consisting of all the General Officers and Field Officers, and Captains commanding Corps, on the Heights of Saratoga, October 13, 1777.

THE Lieutenant-General having explained the Situation of Affairs as in the preceding Council, with the additional Intelligence, that the Enemy was intrenched at the Fords of Fort Edward, and likewise occupied the strong Position on the Pine Plains between Fort George and Fort Edward, expressed his Readiness to undertake at their Head any Enterprize of Difficulty or Hazard that should appear to them within the Compass of their Strength and Spirit: He added that he had Reason to believe a Capitulation had been in the Contemplation of some, perhaps of all, who knew the real Situation of Things; that upon a Circumstance of such Consequence to national and personal Honor, he thought it a Duty to his Country, and to himself, to extend his Council beyond the usual Limits; that the Assembly present might justly be esteemed a full Representation of the Army; and that he should think himself unjustifiable in taking any Step in so serious a Matter without such a Concurrence of Sentiments as should make a Treaty the Act of the Army as well as that of the General.

The First Question therefore he desired them to decide was,

Whether an Army of 3500 Fighting Men, and well provided with Artillery, were justifiable, upon the Principles of National Dignity and Military Honor, in capitulating in any possible Situation?

Resolved, nem. con. In the Affirmative.

Question 2. Is the present Situation of that Nature?

Resolved, nem. con. That the present Situation justifies a Capitulation upon honorable Terms.

The Lieutenant-General then drew up the Message, marked N^o 2, in the Papers relative to the Negotiation, and laid it before the Council. It was unanimously approved, and upon that Foundation the Treaty opened.

October 14. Major Kingston having delivered the Message marked N^o 2, returned with the Proposals marked N^o 3, and the Council of War being assembled again, the Lieutenant-General laid them before It, when it was resolved unanimously to reject the 6th Article, and not to admit of it in any Extremity whatever.

The Lieutenant-General then laid before the Council the Answers to Major-General Gates's Proposals, as marked in the same Paper, together with his own preliminary Proposals marked N^o 4, which were unanimously approved of.

October 15. The Council being assembled again, Major-General Gates's Answers to Lieutenant-General Burgoyne's Proposals were laid before them, whereupon it was resolved, That they were satisfactory, and a sufficient Ground for proceeding to a definitive Treaty.