

MARYLAND GAZETTE.

F R I D A Y, M A Y 5, 1780.

To the P U B L I C.

It has been asserted, by the opposers of confiscation, that our legislature considered the absentees, as subjects of this state, and capable of holding property within it, by imposing on them the treble tax, and by laying them under disabilities, which would have been improper and unnecessary, if they are, or could be considered as subjects of Great-Britain, and aliens. Indeed a late scribbler, the Detector, has said, at the common law was superadded by the imposition of the treble tax. I will endeavour to examine this subject and the act of assembly, and flatter myself that I shall be able to convince every whig in the state (and it is only for whigs at I write) that the treble tax law does not take away the absentees any rights of subjects whatever; that it does not look upon the absentees, either before or after the first day of September last; and that all the disabilities, which it hath imposed upon them, are founded upon the idea that they were actually, at the time of passing that law, British subjects. By the act for the better security of the government, all persons not having signed the declaration, who fled from this state, since the fourteenth day of August, 1775, to avoid taking a share part in the defence thereof, and have crossed the seas, and who shall not return on or before the first day of September, 1779, and take the oath or affirmation by that act prescribed, within one month after their return to this state, shall be liable to the treble tax, and to the disabilities imposed by that act. This is the only clause which relates to the matter in question. To determine the true sense and interpretation of acts of assembly, it is a well known rule, "that we ought, 1. To examine what was the common law before the making the act. The mischief or defect for which the common law did not provide. 2. The remedy which the assembly hath appointed for that defect, and the reason of the remedy; after which such construction is to be made as will best redress the mischief and advance the remedy, according to the true intent of the makers of the act, and for the public good." To examine the foregoing act by these rules I have asserted, and I hope satisfactorily proved, that all persons, who departed from this state, before or upon the formation of our government, remained British subjects, and became alien enemies to this state, and as such, while they remained British subjects, they were, by common law, independent of any act of assembly, incapacitated to hold any office or trust among us, to vote at any election, or to hold or inherit any real property; they were also, by common law, while they continued British subjects, and during the war, disabled from holding any personal property in this state, and from reading, here, or practising any of the employments or professions, in that act enumerated. These then were not the mischiefs and defects against which that act was intended to provide; it was not designed to prevent the absentees from holding offices of profit or trust among us, or voting at our elections while they continued British subjects; it was not intended to prevent them from holding property in this state, liable to only a single taxation, or from exercising among us the employments and professions therein specified, while they continued British subjects and during the war; all these things, the common law had effectually prevented and guarded against. What then were the mischiefs and defects against which the assembly meant to provide? A few considerations will enable us to discover them. Keeping in view the nature of the present revolution, the principles upon which we had acted, and the conduct we had adopted; it was thought probable that many of the inhabitants of Great-Britain might be induced, from time to time, to withdraw from that kingdom, remove themselves to this state, and bind themselves under allegiance to our government, by taking the oath or affirmation prescribed for that purpose, which conduct was, at that time, and is, considered all that was necessary to divest such persons of their subjection to Great-Britain,

to render them subjects of this state, and thenceforth to entitle them to all the privileges of that relation. It was thought not improbable, that many of these absentees, whom cowardice or disaffection had removed from hence to Britain, after the war was at an end, when the danger was past, or when they had found all their attempts to enslave us vain, and ineffectual, prompted by interest, might be induced to disserve the British government, and become subjects to the government of this state. It was thought reasonable to make some distinction between these subjects of Great-Britain who, being in America, had turned their backs upon us; who had refused uniting in our opposition to British oppression, and made it their deliberate choice to continue under its dominion; and such of the subjects of that kingdom, who might be supposed to have remained under its subjection, more from the peculiar circumstances of their residence than from choice, and who, had they been in America, it might charitably be presumed, would not have forsaken us; that is, between the absentees and the other British subjects. The legislature also reflected that, after the expiration of the war, the subjects of Great-Britain, as well absentees as others, might without renouncing their subjection to that kingdom, come into this state and reside here as alien friends, during the time of peace, acquire personal property, and exercise their different professions and employments among us. Exasperated most justly at the conduct of the absentees, who were considered as a principal cause of our calamities, they thought it highly reasonable to impose certain disabilities upon them, as a mark of their just displeasure and abhorrence. To make a distinction between the absentees and the other British subjects; to place the first under greater hardships and disadvantages than the last, is the real, legal operation, of that clause of the act of assembly, and this is the true key to its interpretation. Let us now see in what manner this distinction is made, and what disadvantages are imposed upon those objects of just indignation and resentment. All other subjects of Great Britain remain at free liberty to renounce their arbitrary government, and take the oath of allegiance to this state whenever they shall think proper, upon which we embrace them as subjects, and from that time admit them to a full participation of all the privileges of that relation; but to the absentees we have said, "if you would wish for a full participation of those privileges, you must renounce your subjection to Great-Britain, and return to this state on or before the first day of September, 1779, and within one month after your return become a subject of our government, by taking the oath of allegiance and abjuration; after that period is elapsed, however desirous you may be to become a subject of this state, we will not receive you upon any other conditions, than that of your being liable to the following disabilities: 1. You shall be incapable to hold or exercise any office of profit or trust civil or military. 2. You shall not be permitted to vote at any election. 3. You shall be disabled from practising law, physic, &c. from preaching the gospel, &c. 4. And all the property which you shall acquire, after you have thus become a subject of the state (for after that time you will be entitled to acquire and to hold property among us) shall be subject to a treble tax." Such is the distinction made by this act between absentees, and other British subjects, with regard to the terms on which we will admit them to become subjects of this state, when they shall think proper to renounce their present subjection to Britain. But suppose the war at an end, and peace established between Britain and America, the British subjects in general, without divesting themselves of their subjection to that kingdom, as alien friends, might, during the peace, consistent with the principles of common law, reside among us, acquire personal property, and follow their different professions for a livelihood; but with respect to absentees, that clause of the act of assembly, controuling the common law, hath declared to them, that although we will permit them also to come among us as alien friends, yet in that case, as a punishment for deserting us in our day of distress, they shall be distinguished from

the rest of the British subjects, by having that property, which they may acquire during such future residence amongst us, on which they may bring with them, subjected to a treble tax; and by being disabled from practising any of the enumerated professions or employments. This is the legal exposition and construction of that clause of the act of assembly; it is the only construction which can be given to it, consistent with the true intent of the legislature, and the public good. The legislature most certainly had in view to lay the absentees under disabilities and disadvantages greater than those to which they were liable by the common law; they had not the most distant idea of bestowing upon them privileges, of which they were before deprived, or by that act to alter the common law in their favour. If those persons, who, from their tender regard for the interest of the absentees, have become such violent opposers to the seizure of British property, will examine the act of assembly with a little more attention, they will find, that it is worded with peculiar caution. The absentees are not in any part called by the name of subjects, nor does it appear even by implication that the framers of that bill considered them as such. That act of assembly did not propose to allow the absentees the rights of subjects, from the passing that act, until the first of September, 1779, unless they renounced their subjection to the British government before that day, and make themselves subjects of this state, by taking the oath prescribed for that purpose; and upon the same terms every other British subject is allowed the same rights, with only this difference, that the absentees were limited to the first of September, 1779, within which time they were required to make the renunciation, and the other subjects of Great-Britain are not restrained to any time; but with respect both to the absentees and the other British subjects, it was absolutely requisite that they should make this renunciation of their old government, and take the oath of allegiance to this state, before they should be considered as subjects of this state; and before they should be allowed any of the rights of subjects; and it would be only from thenceforward that they would be entitled to those rights. There is not a word in that act which admits either expressly, or by necessary implication, that the absentees continued to have any right to the property, which they had formerly owned in this state, before the formation of our new government. The framers of that act have not said nor can it be presumed to have been their meaning, that the treble tax should operate upon any property in the state, to which the absentees had a right at the time of passing the law, for by the common law (as has already been unanswerably proved) they were not at that time entitled to hold property in Maryland, but the right of that which they once owned was vested in the state; but they well knew that the absentees, in the same manner as the other British subjects, and the subjects of other nations, might even after the first day of September last, become subjects of this state, or in time of peace they might return here, and reside among us as alien friends. If the absentees became subjects, they might from that time forward acquire property both real and personal; if they resided among us, as alien friends, they might even then acquire personal property. It is that property which they should acquire after they returned to reside here, or which they should bring with them, upon which the act of assembly operates, and which it renders liable to the treble tax. The disabilities to which the absentees are subjected, were not imposed, upon the supposition that they were subjects of this state, but clearly on the principle that they were subjects of Great-Britain, and entirely relate, either to the terms on which they should be permitted to become subjects of this state, on their abjuration of the British government, of which they were then members; or to the terms on which they should, in time of peace, be permitted as alien friends to reside among us, and acquire property. That the true construction and legal operation of that clause of the act of assembly has been misunderstood by many, I have no doubt, nor is it to be wondered at, considering the novelty of the case, and how few are led in their literary