

# MARYLAND GAZETTE.

T H U R S D A Y, A P R I L 5, 1 7 8 7.

To the PRINTERS.

TAKE the first opportunity, which ill health, and necessary attention to professional business, have admitted, to reply to such parts of two publications in the Maryland Journal, under the title of "extracts of letters from Annapolis," as seem calculated to throw an unmerited odium on the members of the senate, who were concerned in submitting a proposition to the people of this state.

The writer of the pieces alluded to, makes the following suggestions:—That the proposition was drawn by Mr. Carroll and me, and agreed to by the other members of the senate—that it was artfully phrased, with intention, that if generally signed by the people, it might be construed to establish the position, that the senate (and also the house of delegates) are independent of the people, and not bound by their instructions in any case; but if the proposition was rejected by the people, the senators then intended to take shelter under the pretence, that the proposition only meant to declare that the senate is independent of the house of delegates."

It is not very material by whom the proposition was drawn, as all the senators present agreed to it, and it cannot be doubted, but that all were competent judges of the meaning, as the two who are supposed to have been the draughtsmen, but it would seem, from the manner in which the proposition is phrased to have been produced, that the writer referred to intended an inference should be made, that the two senators artfully worded the proposition so as to admit of a construction not perceived by the other senators, who are represented to have assented only, without having any other share in the business; this representation is mere supposition, and is altogether different from the fact, for there was not the smallest concert between Mr. Carroll and me in this transaction; we had not, to my knowledge or belief, any conversation or interchange of sentiment, previously to the meeting at Mann's tavern, upon the subject of a proposition to be submitted to the people; nor was any proposition, declaration or instruction, drawn by us.—We did not see each other except in public in the senate, or in committee, when we were too much engaged in the pressing business of the session, to confer on other subjects.—The following is a true narrative, to the best of my recollection and belief, of what led to, and happened at, the meeting at Mann's tavern. The general assembly having adjourned very late on Saturday night the 20th of January last, it was thought necessary that a meeting of the senators, then in town, should be held the next morning, to determine on the best mode of dispersing the messages of the senate, and to consider if any thing else was necessary to be done by the senators, as individuals, before they parted. The senators met on Sunday morning, according to an appointment for this purpose, and after a short conversation among the senators, and their assistants being given upon the subject of a proposition to be submitted to the consideration of the people, I drew up what appeared to be in substance conformable to the wishes of the senators; the draught was examined by all the senators present, and amendments were made in it, I think, by two members of the senate, and after amendment, it was agreed to without objection by any one.—I do not recollect that Mr. Carroll, of Carrollton, dictated or wrote any part of the proposition, he copied it from the rough draught, which I believe was interlined, and part erased by the amendments which had been made to the original draught—the copy was read, and delivered to the printer by Mr. Carroll, in the presence of the other senators; with a request that it might be printed, ready to be sent with the senate's messages, and so forth from the proposition, being the result of deep consideration, with intention to deceive, I believe the whole time taken up in settling the mode of circulating the messages, and framing and copying the proposition, did not exceed one hour.—The proposition agreed to is as follows:—

"We the subscribers attached to the present form of government, and esteeming it proper and necessary to preserve every part of it, are of opinion, that each branch of the legislature ought to be free, and at full liberty to exercise their judgment, upon all public measures proposed by the one to the other.

*I did not perfectly remember whether I drew up any proposition before I went to Mann's, or whether the first proposition drawn up by Mr. Mann's was by me or Mr. Carr. Upon application to Mr. Carr, of Carrollton, for his recollection of this part of the fact, he has given it as above stated; and I have relied on his memory for the rest of the fact stated in italics. From the circumstances in relation to I have no doubt but the fact was as stated.*

The circumstances which took place before the adjournment of the assembly, ought to be taken into consideration, to form a just opinion of the design with which this proposition was made to the people, by the senators.—It is well known, that upon the bill for an emission of paper money being dissented to by the senate, the house of delegates determined to adjourn, and to address the people—printed instructions to be signed by the people, in favour of the bill, directed to both branches of the legislature, and stating that both had appealed to the people, were dispersed by the friends of the bill, as the senators were informed; a majority of the delegates having passed the bill, they did not want instructions to regulate their conduct, the only sensible end to be answered, by obtaining instructions in favour of the measure, was to oblige the senate to agree to a bill, which they had unanimously dissented to—the senate considered this proceeding of the house of delegates as an appeal to the people by one branch of the legislature against the other, they stated the dangerous tendency of such appeals, and the consequences to be apprehended from them—they knew that by the constitution the senate and house of delegates were equally free and independent of each other, and they wished to prevent a practice, which, by throwing the whole powers of legislation into the hands of the delegates, would render of no avail the provision of our constitution. With the messages in which these matters are stated, the proposition was intended to be circulated; and it was designed by it to collect the sense of the people on this point, whether the two branches of the legislature should, as heretofore, be left at liberty to exercise their judgements on measures proposed by the one to the other, or whether the people would introduce the practice of appeals, to oblige the dissenting branch, to accede to the measures proposed by the appealing branch.—The proposition contains the sentiments which the senators conceived were proper to be expressed by the people upon this subject; and it was supposed, that if the people signified their opinion to the legislature in the terms of the proposition, it would be considered as a direction from the people to the legislature, and would refrain the practice of appealing to the people upon a disagreement between the two houses; but at all events it was important to know the sense of the people on this subject, because if appeals, and instructions in consequence of them, were to become a part of ordinary legislation, it would be more wise, in all doubtful cases, to take the sense of the people before any formal determination, rather than to subject either branch to the odium of having acted contrary to the sense of the people, by collecting their opinion after a decision; besides, it would be obviously proper, upon this mode of conducting legislation, to make regulations for taking and signifying the sense of the people.

It is said by the writer alluded to, that "the declaration of the senators having no exception or explanation, is clearly an assertion that each branch of the legislature is free from all control"—to me it appears, that the proposition contains an explanation to pointed, that it cannot fairly be taken to mean any thing different from what I have explained to have been the intention with which it was made—the first part of the proposition is, that each branch of the legislature ought to be free, and at full liberty to exercise their judgment on all public measures—then follow the words "proposed by the one to the other," which by pointing to the case in which the opinion of the people was ascertained, shews that it was the intention of the framers to check the practice of appeals (which it was apprehended was intended to be introduced contrary to the wishes of the people) by obtaining the opinion of the people, that both branches of the legislature ought to be left at liberty to exercise their judgment, under the circumstances stated—the concluding words shew likewise that it could not be the intention of the framers, that the proposition should be taken or construed as a negative or surrender of the people's right to instruct the legislature;—had this been the design, what was the use of these words? They were certainly put in for some purpose, but according to the above-mentioned writer's construction, they stand for nothing, and by the same mode of construction, the most innocent sentence may be made to speak blasphemy.—I do not pretend that the proposition is drawn with all the accuracy with which it might have been, if more attention had been given, to convey the intended idea with such precision as to prevent every possible misconception; all I insist on is, that hastily as the proposition was drawn, it is sufficiently plain to exclude any supposition that it was meant to decide any question respecting the rights of the people, and I never had an idea that it could, by any rational creature, be considered as a denial of the people's

right, to control the legislature; nor do I believe, that any other senator ever entertained an opinion that it could possibly bear this construction.

It is said by this writer, that the declaration of the senators, and the draught of instructions by judge Hanson, are in reality the same. To me there appears to be a substantial and striking difference between them; the draught of instructions denies that the people have constitutionally a right to interfere with the deliberations of the senate, unless the ends of government are perverted, or liberty manifestly endangered, and declares, that "whenever exigencies shall require the people to make their own will the law, there will be no longer the constitutional legislature consisting of two branches," which plainly imports, that the people have not a right, under our constitution, to direct the legislature to pass a particular law in any case. The proposition of the senators does not determine the question of rights, and by leaving the two branches of legislature at liberty under particular circumstances, means only to declare, that it would be improper for the people to exercise the power of directing either branch to accede to the measures of the other, under the circumstances; nor the existence of a right, and the forbearance to exercise that right in particular cases, are perfectly contrary ideas; the latter may be agreed to, without a denial or surrender of the right.—The exercise of, or forbearance to use, a right, is a matter of prudence in those who may possess it, which does not in any degree affect the existence of the right; but a surrender or a denial of a right, by those who have the power of determination, puts an end to the right, if it be of a nature capable of being destroyed by such means.—It is a denial of a right, and a declaration that the right, if it exists, ought not to be exercised under particular circumstances, to give efficacy to an inconvenient practice, or one and the same thing, then there would be grounds for the writer's assertion; but if they are altogether different, then he is erred in the conclusion by him made, that the proposition and instructions are in substance the same.—The misconception which this writer has given to the proposition of the senators, cannot be more strikingly shewn than by pointing out the difference between it and the instructions; for if these two instruments substantially differ (as the writer has admitted that the instructions are plain and explicit) he must also admit that the proposition was not intended to mean the same thing that the instructions import.

I do not remember that I ever gave an opinion upon the question, whether the legislature were bound to pass particular laws, by the instructions of the people in favour of such laws, nor do I mean either directly or indirectly to give an opinion on such question in this address. If ever it should be my duty to pass an opinion upon this subject, I shall do it according to the best of my judgment, without being influenced in forming or declaring the opinion I may think just, by a consideration of the power or weakness of those who may differ with me.

It must be admitted, that the existence of a right in the people to instruct the legislature, is consistent with a negative by the people to the practice of appeals by either house, upon a difference of opinion between the two branches of legislature.—The exercise of such right by the people, freely and of their own accord, leads not to the same consequences which it is apprehended the practice of appeals would produce.—The great body of the people, left to form their opinions freely and without bias or prejudice, are said never to err, but this infallibility has never been ascribed to any select branch of legislature; and I believe it will not be contended, that a perfect freedom of forming an unbiased opinion, will take place among the people, after a decision upon the question has been given, by their immediate representatives, who must be admitted to possess much greater weight and influence among the people than the senate.—When once the opinion of the house of delegates is known, and the people are called on to affirm or reject this opinion, the decision of the representatives will in most cases greatly influence the sentiments of the people, and may induce them to form opinions, different from what they would have done, if the weight of this influence had never been applied, and it appears to me, that a measure recommended by the delegates, must be most disagreeable to the people indeed, if instructions in its favour cannot be obtained.—I do not mean by these observations to point to the measures upon which the two houses of assembly have differed, or to the measures who have advocated or dissented to these measures; I reason from what appears to me to be the nature of things, without taking into view any particular present objects.