

MARYLAND GAZETTE.

T H U R S D A Y, M A Y 10, 1787.

To A R I S T I D E S:

IN your last address to the people of Maryland, you have been pleased to take some notice of Publicola. The right of the people to instruct their delegates, had always appeared to me an essential safe guard of public liberty. I not only read of it as a speculative opinion, of individuals in their closets; but history told me of its being actually exercised in all countries, and all governments, where the people had a share in legislation, by delegates or representatives, and when I found you and a few others among us, asserting a different doctrine, I considered it as a dangerous attack upon the rights of my fellow-citizens; and therefore made some animadversions upon it.

But it was your duty, you say, as a guardian of the constitution, to protest against what you conceived a most dangerous innovation. This, Sir, seems to me to be another new-fangled doctrine. I wonder what it is that has made you a guardian of the constitution, to protest in news papers against what you may conceive to be innovations. I can find nothing of it in your commission as a judge, nor can I find it in your oath of office. But you may tell me, the oath of allegiance, which you also take, binds you to defend the government, against all conspiracy and combination, to be the guardian of the constitution, to protest in news papers, why then every contable in the State, and every cryer of the courts, and the very door-keepers of the general assembly, are equally with you guardians of the constitution; for they all take the same oath of allegiance. In the exercise of your judicial authority, upon subjects judicially before you, no doubt you have great and extensive powers; but as to questions not before you judicially, you are only a private citizen. If however the title Sirs and pleases you of being a guardian of the constitution, to protest in news papers, you may take it, and so may the cryer of your court, for what I care about it.

You were not, you say, particularly interested in the question. Now I think you were particularly interested; for if I mistake not, the peoples instructions were to have been given upon the bill for a paper emission; and by the provisions of it, the officers salaries were to be paid in that money. You were as much disinterested upon the subject, as you were upon other matters, in which you have displayed your patriotism, by memorials and pamphlets.

But, except on important occasions, a man that applies to the people for instructions, will be deemed, you say, a promoter of sedition, or what St Paul calls "a pestilent fellow." I would ask, who are to judge what are important occasions? I beg pardon; to be sure the guardian of the constitution to protest in news papers, must be the judge; and as you, Sir, have already determined, that the distresses of the people as to their taxes and debts, and the ways and means proposed for their relief, were not a subject important enough to be laid before the people for their instructions, why then every delegate, who applied for such instructions, was a promoter of sedition, or what you say, St. Paul calls "a pestilent fellow." When Judge Jeffries, that bloody monster, butchered and murdered the illustrious Sydney and lord Russell, and other patriots, his butcheries and murders were defended by perverting the doctrines of St. Paul; when bigots and zealots lighted up the flames of persecution, the stake, fire and faggot, were defended by the like perversion of the doctrine of St Paul; and when members of the house of delegates are to be marked and branded, as promoters of sedition and pestilent fellows, we see a judge of the general court of Maryland mangling St. Paul in like manner, and making the like pious application of his writings.

Our constitution and form of government says, that our judges ought to be learned in the law, and provided with liberal salaries; but for men not learned in the law, no salary at all is provided. A judge who perpetually dabbles in politics, and spends his time in writing laborious notes, laborious memorials, laborious pamphlets, and other laborious publications, must find it, I think, very difficult to require and retain such a knowledge of the law as his station requires.

Of all men in the community, a judge ought to be the most disengaged, from the agitations of private or public discussions. The character he sustains, decides upon the lives, property and liberties of his fellow-citizens and it is impossible to hold the scales of justice with a steady hand, when the judgment is shook by the assaults of prejudice

and passion. Of all topics, I know of none so likely to enflame the minds of men, and raise their passions as questions touching the liberties of the people; and the records and annals of England tell us, that when judges once enter the lists as partizans of power, they soon become prostitutes upon the bench, and sit instruments to execute the most wicked and atrocious purposes.

You collect, you say, from the whole of my publication, that I asserted that "Mr Locke, lord Moleworth, and Mr. Trenchard, maintained with their pens the right of binding by instructions; that Mr Hambden and lord Russell maintained it with their blood; and Mr. Algernon Sydney with both." This collection of yours, Sir, is nothing more than the work of a prolific fancy; indeed there is so little ground for it, that I am almost led to think it a wilful misrepresentation.

Having fabricated an assertion for me, you then proceed to expose it. "In a popular harrangue this assertion might not surprize; committed to writing, published to the world, and open to examination, there is no excuse or palliation for it, except that which Publicola would disdain to offer." I have no objections to your exposing your own assertions and declarations; but to tell the people of Maryland, they are my assertions and declarations, is to depart from all truth and decency, and to charge which Aristides would disdain to utter.

I cited the illustrious names of Locke, Moleworth, Trenchard, Hambden, Russell, and Sydney, to maintain the following positions.

- 1st That all legislative power is a grant of the people, and a trust for their welfare and happiness.
- 2^{dly} That the people are the judges whether this trust was properly or improperly executed.
- 3^{dly} That if they were of opinion it was not properly executed, they might go even to the extreme of resuming the powers of government, if other means of redress were ineffectual.

The great object of my publication, was to prove the propriety of the assemblys adjourning to take the sense and judgment of the people, upon the measures proposed by the house of delegates, and rejected by the senate. It therefore became material to establish the principle, that the people are the rightful judges of the good or bad tendency of all public measures. To maintain this principle, I cited the above authorities, and I hope you will admit they are directly in point. I afterwards shewed, that the right of interference by instructions, was a natural and necessary result from the principle or right of judgment. Not that these patriots employed their pens and blood in defence of the particular right of instructing, but in defence of principles, from which I contended, the right of instructing resulted as a plain and natural consequence. And before I have done, Sir, I think I shall oblige you to confest it by fair argument.

But you have insulted it seems the memory of Sydney, and you have thought proper to beg pardon of his illustrious spirit. May the illustrious spirit of Sydney, you say, forgive the injury which from the misinformation of Publicola, you lately offered to his memory. I think the asking of pardon was the least you could do. But why is the blame to be put upon me? What misinformation did I give you? I absolutely deny giving you any; you again misrepresent me, and seem to forget the obligations of truth and decency.

It is remarkable however, that when you thought Mr. Sydney was in favour of the right of instructing, you immediately insulted him; he was then no doubt a promoter of sedition, or what you say St. Paul calls "a pestilent fellow." But when upon reading a passage in his writings, which you do not understand, you thought he was against the right of instructing, then you cut about, and extol him for a great patriot, and you bring him forward before the people of Maryland as an illustrious advocate for you. I believe, Sir, you must once more cut about, and consider Mr. Sydney, as you seem originally to have done, a promoter of sedition, or what you say St. Paul calls "a pestilent fellow;" for although Mr. Sydney did not fall a martyr upon the particular point of instruction, nor was quoted by me for that purpose, yet I assert he expressly maintains the peoples right to instruct, and tells us in the most explicit terms that the people of England enjoy this right, and have never parted with it by their own consent, nor suffered it to be taken from them by force or any other unjustifiable means.

But how is this possible you may ask, considering the passages you have cited from Mr. Sydney, and which you say are all the material passages upon the subject. I answer and say, you did not understand

the passages you cited, and that there are other material passages.

Remember the question between us is not upon the right or force of instructions from a particular county, city, or borough, but upon the right and force of the national voice communicated and declared to the legislature by memorial, remonstrance, INSTRUCTION, from every county, city, and borough, or the majority of the nation. The adjournment of the house of delegates was, not to take the sense judgment and instructions of a particular county, but to take the sense, judgment and instructions of every county. The right of judgment, which the people retain on the establishment of civil government, and which presides and watches over the legislative exercise of the powers communicated, and decides in all cases, whether these powers are properly or improperly executed, dwells not in the people of a particular county, city, or borough, but in the people of every county, city, or borough, or a majority of them.

As to the force of instructions from a particular county, city, or borough in England, different opinions have been entertained by different writers, upon the subject. The representations there for a county, city, or borough, are said by some to be representatives not only for the county, but for the whole nation. From whence it is contended that

yet their instructions cannot be conclusive and binding, because they are partial. Others entertain a different opinion, and assert that each county has an exclusive absolute right of binding its own representatives by instructions, and reject the idea as a fiction that the representatives of a county, are the representatives of the whole nation.

The very ground upon which the objection is made that the people of a particular county have not an absolute conclusive right to instruct the representatives of that county, admits the binding force of instructions from every county, or the majority of the people; for the objection is that the representatives of a county being the representatives of the whole nation, instructions from a particular county, can only be the instructions of the minority. But put the case of instructions from every county, or from the majority of the people, and then the objection ceases, and the instructions are absolute and conclusive.

Among the number of writers, who are of opinion that the representatives of a county, are the representatives of the whole nation, is Mr. Sydney. And upon this principle it is that he considers the opinions of the electors of a particular county when communicated to the representatives of that county, as a proper interference for information; but not as an absolute and conclusive instruction. Take now the passage you cited:

"Every county, says Mr. Sydney, does not make a distinct body, having in itself a sovereign power; but it is a member of that great body which comprehends the whole nation. It is not therefore for Kent, or Sussex, or Lewes, or Maidstone, but for the whole nation, that the members chosen in these places are sent to serve in parliament. And though it be fit for them as friends and neighbours, so far as may be to hearken to the opinion of the electors, for the information of their judgment, and to the end that what they shall say, be of more weight, when every one is known not to speak his own thoughts only, but those of a greater number of men, yet they are not strictly and properly obliged to give an account of their actions to any, unless the whole body of the nation for which they serve, and who are equally concerned in their resolutions could be assembled. This being impracticable, the whole parliament to which they are subject, if they betray their trust, is scorn, infamy, hatred, and an assurance of being rejected, when they shall again seek the same honour."

Mr. Sydney, it is plain speaks in this passage of the force of instructions, from the people of a particular county, to the representatives of such county, and considers such instructions not absolutely conclusive, because the persons chosen are not only representatives for the county, but the whole nation.

It is material to consider what led Mr. Sydney to make the remarks and observations in the passage cited. Mr. Filmer, a ministerial partizan had published a book in which he asserted, "that the people of England must only choose, and trust those whom they choose, to do as they list."

Mr. Sydney devotes a whole chapter in refutation of this very slavish position, which, Sir, is much like your own position. He replies and says, "This is ingeniously concluded; I take what servant I please, and when I have taken him, I must suffer