

who heard it with their Ears, that the Canons were blasphemous, ridiculous, and obscene, and that this Reproach was suffered to pass without the Reprehension of the House.

I will now lay before the Parson, a Passage from *Baibur's Letter upon the Abuses and Corruptions of Ecclesiastical Courts and Jurisdictions*, which I fear will be still more shocking to his pious Soul. "I beg Leave," says my Author, "to conclude with the Words of a late eminent Prelate of the Church of England, viz. Dr. G. Burnet, Bishop of Sarum, who, in a familiar Discourse with me on this very Subject, freely declared, 'That the Canon Law and Ecclesiastical Jurisdiction, were originally derived from HELL; and that THITHER it ought to be sent again: And, observing me to be somewhat startled at his Words, he continued thus: A greater than I, even an ARCHBISHOP, (naming Grindal) was also of this Opinion.'—Courage, Mr. Judge, you will not be burnt for a Heretic, after all. An Archbishop and a Bishop, against a little Parson, are very comfortable Odds!—If Hell be the proper Place of Residence for this kind of Jurisdiction, I hope we shall have the Grace to keep it out of Maryland, and to look upon every little intriguing Wretch, who attempts the Introduction of it, not as a *Servant of the King of Kings*, but as a *Minister of the Prince of Darkness*.—After all, however, the Judge protests, he cannot recollect that any such Expression ever escaped him. But, let it however be granted, and he will have all the Comfort, which can be drawn from the Example of this decent meek-spirited conscientious Pastor, for thus is he said to have exclaimed against a certain Vestryman, after the Defeat of his memorable Plot against the Counsellor:—'G-d-d-n that stiff-necked Son of a B--h. By G-d I believe I shall make nothing of him. I wish he was in Hell!'—What Intemperance of Expression! From a Minister of the Gospel! Against one of his own Flock too, whose Soul he had in Charge! In a Public-House too!—Pity but he had Two Parishes!

Whether the Judge does or does not read, understand, or learn, others will determine. There are some Subjects, on which none but a Fool, with a Front of Brags, is forward in speaking, and then he is sure to expose himself. None but such a one would boast of his sacred Name, consign'd by Virtue and the Muse to Fame—of the Favours of the Heathen God, called *Phobus*—of his Satirical Verses, that like the *Iambics of Archibaldus*, will drive an Adversary to Despair, and make him hang himself, &c. &c. &c. If Self-praise, and a Contempt of the just Censures of the World, are the true Roads to Fame, her Temple is barr'd against modest Merit and real Virtue, and open only to the most flagitious Part of Mankind.

"Pity he had not been thought too old to rise."—*Hinc ille Lacryme*.—Saucy Jackanapes! A fitter Subject for a Cudgel or a Horse-Whip, than for any other Notice.

But "C. D's Evasion," which the Parson's Case from *Vaughan*, when truly represented, will shew to be no Evasion. "If the Canon Law be made Part of the Law of this Land, then is it as much the Law of the Land, and as well, and by the same Authority, as any other Part of the Law of the Land."—Here the Parson stops—But the Passage proceeds thus—"and if it should not be the Law of the Land, then it hath no more Effect than a Law of Utopia; therefore the Canon Law, in Force here, is the Law of the Land."—The Quotation of only Part, was, I suppose, to make Amends for his former Additions; but the Trick intended, is upon the same Principle—to impose upon the Public, and deserves therefore to be exposed. What does this Case prove, but that the Canon Law, when made the Law of the Land, is what it is made to be—Common Law, if received and established by immemorial Usage—Statute Law, if enacted by the Legislature, and so would the Laws of France, Spain, or China be, as well the Canon Law. Has it been received here? No—In the other Colonies? No—Established here by any legislative Act? No—It is then, as to us, the Law of Utopia.

"It is universally held, says the *Bystander*, that the Canon Law is binding upon the Laity, as well as the Clergy of the Realm."—Certainly, when established by immemorial Usage, or by Statute—This is only saying, that the Common and Statute Laws, are Laws of the Laity and Clergy of the Realm. He does not understand the Import of his Expression, if he means this as his Conclusion; and if this be not his Meaning, he has made no Conclusion at all. Is Maryland in the Realm of England?—Another Specimen we have of his *Scholarship*, is in the Word *Paramount*, where he tells us, that Lord Baltimore is declared, in the Charter, Patron Paramount. But the Charter talks no such Non-sense, it is the *Bystander's* own. Paramount is a relative Term. If Lord Baltimore is Patron Paramount, pray where are the inferior or subordinate Patrons?

Burnet observes, "that after the Abolition of the Papal Power, there was no Branch of Sovereignty, with which the Crown was more delighted, than that of Supreme Head of the Church, on the Imagination, that the Power, exercised by the Pope, was annexed to the Crown, whereas only the legal Jurisdiction, wrested out of the Hands of our Kings, was restor'd to them. The Pope arrogated an Authority superior, not only to the Canons, but the Municipal Laws, and our Kings seem'd to consider themselves as Popes in their Dominions. Hence one Reason why a Reformation of the Ecclesiastical Laws was not effected, their unfettered State being an Advantage to the Sovereign Power. Hence the Office of Lord Vicegerent, and after, of the High Commission Court; and

It is true a great Theologian declared, that he could prove the Quakers to be Infidels—What his Topics were, whether that they would not admit Titles to be due of divine Right—look'd upon the Spiritual Courts to be Anti-christian—refused to swear Laid too great Stresses upon good Works—could not bring themselves to say, my Lord, doff their Hats to him—we are left to guess. Tho' these Infidels might afterwards have observ'd, when this great Man was attained of Treason, that their simple Affirmation would have been of more sacred Obligation upon their Consciences than all the Oaths this Orthodox great Man took, were upon his, yet in general they are pretty moderate.

lastly, the dispensing Power, the Civil Law being the common Municipal Law of all arbitrary States in Europe, and the most arbitrary of our Kings have given the most Countenance to it. The Canon Law hath the same Lineaments and Features, being framed to render the Pope, in the Church, what the Emperor was in the State, both perhaps being more for the Ease of the Governing, than the Convenience of the Governed." What were the inherent Rights of the Crown, the legal Limits of Prerogative, before Papal Usurpations had diminished the Authorities of Royalty, as well as the Privileges of the People, is a Question of great Difficulty, on which a Man of real Knowledge, with even a small Degree of Modesty, would speak with great Diffidence? Several Statutes were made in 25th—27th—35th of Hen. VIII.—the 3d and 4th of Ed. VI.—rit. Euz. with the View of ascertaining this Point, but none of them were carried into Execution, for the Reason intimated by Burnet.

God. c. 266. 7. is, that *Collector's* Abridgment, and not a distinct one, of a very long Case of Twenty-five Pages in the Original, and which too the *Bystander*, as usual, has thought proper to misrepresent, though, from his Ignorance of the Subject, not to much Purpose. The Words, *extensible over all subordinate Countries and Dominions*, are his own Interpolation, and he has taken Care to set his Mark of Reference to this very Passage, for the honest Purpose, no Doubt, of catching the Reader's Eye and Attention to it. To obviate the Impressions of his *Disingenuity*, it becomes necessary to state God. a little more distinctly. "If a Parson," says he, or *Dean in England*, takes a *Bishoprick in Ireland*, the first Church is void by Cession, because Ireland is a subordinate Realm, and governed by the same Law, for, by *Whitlock Justice*, there is but one Canon Law per totam Ecclesiam. Therefore wherever the Authority of the Pope extended, whether in one or divers Realms, the Cession would happen. *Nemo potest habere duas Militias, nec duas Dignitates, et est impossibile, quod unus Homo potest esse in duobus locis, uno tempore*. The whole *Spiritual Court* is but one Canon Law, but one. *Doddridge* just added—that the Law of the Church of England is not the Pope's Law, but extracted out of ancient Canons, as well general as national. Ireland is a subordinate Realm, and governed by the same Law, tho' before Hen. II. they were several Realms, yet the Laws of England were proclaimed by King John, and it was made subject to the Laws of England." To *Godolphin's* Abridgment it is proper to add, that the Canon Law had both by Adoption and Statute been established in Ireland.

If the *Bystander* had confined himself to the Expression, *Church of Maryland*, and kept up the Idea, proper to it, we should not have been pester'd with such a Profusion of Jargon; but, shifting his Style, and with this, varying the Idea, he has fallen into the Absurdity of drawing Consequences from false Principles.—In the Profession of Faith, or Articles of Doctrine, the Churches agree. In respect of Discipline or Government, they do not; but the Canons, contended for, are such as regard only the Discipline or Government of the Church of England, and consequently are impertinent to the Subject, viz. the Church of Maryland.—If the Principle could be established, that our Church is the Church of England, subject to the same Canons, Laws and Statutes, the Consequence must extend much beyond what the *Bystander* has yet avowed. We must necessarily be subject to Episcopal Jurisdiction—Spiritual Courts, for the Exercise of it, must be established—Spiritual Judges, and the long Train of Ecclesiastical Officers, &c.—Our Act of Assembly become a dead Letter.—Tithes are Part of the Establishment, and would be due.—The Clergy would be liable to the Payment of first Fruits and Tenths, and to the Observance of many Duties no one has ever yet attended to.—Our Livings would be subject to Lapse.—Presentations would be made to the Bishop; for the Charter confers only a Grant of Advowsons and Patronages, and of the Power to erect and found Churches, without a Syllable of Exemption—a Power too, that never has been exercised.

The Case he refers to, was not understood by the *Bystander*, for the Rule laid down in *SALKELD*, that "if an uninhabited Country be settled by English Subjects, the Laws, which are their Birth-rights, are there in Force," does not extend to such, as are not convenient to their Situation and Condition.—*BLACKSTONE*, speaking upon this very Subject, says, "The artificial Refinements and Distinctions, incident to the Property of a great and commercial People, the Laws of Police and Revenue, (such, especially, as are inforc'd by Penalties) the Mode of Maintenance for the established Clergy—the Jurisdiction of Spiritual Courts, and a Multitude of other Provisions, are neither necessary nor convenient, and therefore not in Force in the Colonies."

"Secure and maintain our Religion!"—What an Idea must this Man have of Religion, who would make it depend upon Canons, and is solicitous for those only, because he weakly imagines, he could hold a Plurality under them.

It would be to little Purpose to enquire, what the Acts of 1692, and 1696, (or 1654) enacted, they having been long since repealed, or under what extensive Privileges of Toleration this Colony was planted, and grew 'til the Revolution, or whether the Establishment, to which those Principles gave Way, hath promoted or stopped its Growth. But how is the Establishment of the Canon Laws to be proved? Not by the Rashness of Ignorance, or the Arrogance of Effrontery. The Ecclesiastical Law of England, he contends, "is declared to be in full Force in all its Parts, by the Acts of 1696, and 1723."—What will not this Man assert! There is not a single declaratory Word in either of the Acts refer'd to. That of 1696, has been long since out of Force, and the other relates merely to Free-Schools. But here his Logic is to palliate the scandalous Misrepresentation, as well as in his Quotation from *Godolphin*.—The Canons and Constitutions of the Church (of which some relate to Schools) are not to be infringed by the Visitors, in their Rules for the Master, Usher, &c. and therefore it would be absurd, that they should not be in full Force in all Respects. The Principle is shortly this—One Law cannot be

adopted, without the whole System. "The Law of England, as Lord BACON observes, is as much mixed as the Language;" and I believe the English have as much a Right to adopt a particular Law into their Polity, as a particular Word into their Language, without being obliged to change their whole System, or whole Language. That the civil Law has been adopted, is well known, but are the English, therefore, to say to their King—"Vobis summum Imperium in omnibus Dii dedere, nobis Obsequium Gloria relicta est." (Heaven has bestow'd upon you the Sovereign Rule in all Things, to us the Glory of Obedience is left) "Quod Principi placuit Legis habet Vigorem."—(The Pleasure of the Prince, has the Force of Law) "Imperator solus et Conditor et Interpretes Legis existimetur."—(The Emperor alone, is both the Maker and Interpreter of the Law.) The 12 Tables were collected from the Laws of Athens and Sparta; but whoever thought, that all the Laws of these Cities were therefore binding upon the Romans.

All testamentary Business is transacted here, in a Jurisdiction all together Lay, as it was in England (and still is in some Parts of that Kingdom) before Papal Usurpations had wrested it out of the Hands of the Laity, on this pious Reason "that Spiritual Men know best what is for the Profit of the dead Man's Soul, and have more Confidence to do Justice than the Laity."—If the dead Man was intestate, tho' he left a Family, those Spiritual Worthies seized upon his Estate, on the Pretence of disposing of it for pious Uses. A Will, and the personal Estate from the Ordinary's Clutches; but, upon this Circumstance, a Pretence was set up for drawing before him the Probate of Wills. A Writing, without more, was not sufficient; but it was to be proved to be what it imported. Who was to judge of this Proof? In all Reason, the Ordinary, who had more Confidence to do Justice, than a Layman. To prevent subsequent Disputes, an Act was proper to be done by the Ordinary. He therefore granted Letters, which testified the Executor's Power, and the Executor was to be accountable for his Conduct, under the Ordinary's Commission.—But Prohibitions, the Jurisdiction of Equity, and the Statutes, particularly of Ed. I. Ed. III. Hen. VIII. Car. II. have reduced the Canon Law on this Head, to very little Consideration, even in England, and if our Act of 1715, by the Word *Laws*, cou'd with any Propriety, be understood to comprehend the Canons, the Saving and Provision, in the Act, would reduce them to a mere Shadow. Here, I suppose, his Logic is again to come in Aid—"Causes Matrimonial, Incontinency, Tithes, &c." are to fall under the Cognizance of the *Common Law*.—For since he has Jurisdiction in Testamentary Causes, and the Canon Law is to be his Rule "how glaring an Absurdity," that he should not have Cognizance of Incontinency, Tithes &c.—If this was not his Meaning; why was the Note? Why the Inference from his Citation, that the Judge and Lawyers ought to be well acquainted with the Civil and Ecclesiastical Laws, as well as the Common and Statute? Why the Phrase, *Ecclesiastical Justice*?

To shew the blind Rashness of this Man, and how little aware he was of the Consequences of his own Doctrine, I would just observe, that the 127th Case has relation to the various Subjects, cognizable in the Spiritual Courts, and the *Common Law* can have no Jurisdiction, except in Testamentary Causes, unless because he has Cognizance of one Matter, he necessarily must have Jurisdiction in every other. If this be not his Meaning, nothing he has advanced is more impertinent than this Canon, which is saying a great deal.

But how strange it is, that this Man should talk of Canons, and what they enjoin! By them, Pluralities are disallow'd, unless with Dispensation in Favour of Persons of sublime Abilities, of which, without Doubt, the Dispensation is a sufficient Proof. But where is this dispensing Power, under which the Parson shall receive the Benefit of a Tax laid upon the People, against the express Terms of the Act? Let it even be admitted, that, before our Act of Assembly for the Establishment of Religious Worship, &c. now in Force, the Canons had been adopted here, and Pluralities had been tenable, yet when the Act pass'd, with the Consent of the Crown, after having been framed in England, and sent hither; and thus the King and the People had concurred in a Law against Pluralities, except with the Consent and Agreement of the Vestries of adjacent Parishes, can any sober Person imagine the Act is now to be dispensed with? That a Tax imposed by the Act for one Purpose, can be directed to another? In what would the Difference consist, between levying Money upon the People without their Consent, and applying Money, granted by them, against the Terms of their Grant?—The *Bystander* was before called upon to answer these Queries, but has thought proper to decline the Task. Whenever he succeeds in it, I will venture to pronounce, that he will have the Merit of establishing the very Principle of the Stamp-Act itself.

By the Canon Law, as well as by the Common Law, "Militans Deo non implicetur secularibus Negotiis." "Clerici non ponantur in secularia Officia."—(One engag'd in the Service of God, may not be intangled in secular Affairs)—Clerks ought not to be put into secular Offices.—They ought to have nothing to do with temporal Employments, especially of the Law; "for it is absurd and opprobrious for them to be fill'd in Decisions of Law-Suits."—But, says Dr. "Ayliffe, they sit in Ecclesiastical Courts, avoiding the Opprobrium, because they are not at all fill'd in the Law."

*Blackstone* observes, that the Clergy have peculiar Exemptions, and are also under peculiar Incapacities, in order that they may not be call'd from their Duty; and his Opinion is certainly just, "that they ought to have a competent and honourable Maintenance, being an Order of Men, separated from the rest of Mankind, and excluded from other lucrative Professions, for their Sake."—It is notorious, that our Clergy are much better provided for than the Parochial Clergy in any other Part of the British Dominions, in Consequence of an Act of our Provincial Legislature. Such of them, as conscientiously discharge their Duty deserve, and never

*Blackstone* here makes a dire Distinction between Exemption and Incapacity, but I presume he is no Sage of the Law.

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