

MARYLAND GAZETTE.

THURSDAY, JANUARY 28, 1773.

TO THE PUBLICK.



WHATEVER might be the motive of JONATHAN BOUCHER, to address certain queries to SAMUEL CHASE and WILLIAM PACA, Esqrs. we do not take upon us to say; nor, is it a matter of any consequence to the Publick, to enquire. The queries have drawn an answer from those Gentlemen, full of matter interesting to the Publick, and containing doctrines equally new, and extraordinary. We take the liberty to offer the Publick, a few thoughts, and to make a few observations, on this extraordinary answer. We shall not ostentatiously give the Gentlemen our real signatures; since, it might give them the trouble of contesting their obligations, or of returning thanks for the favour. We shall not, however, flatter the Gentlemen's reputation; nor, shall we attack their good names. The Gentlemen's consistent conduct hitherto, must give them a reputation with the Publick; and their future actions, must establish their fair fame. It is an observation of the critics, That the disputant who first complains of foul language, or attacks on his reputation, hath the worst of the argument. This is in it's nature exemplified in the present dispute; for, in the answer, we have complaints of this kind, without number, and recrimination without end. And, men of sense observe, that no man could have written an answer, so suitable to the purposes of the Gentlemen; but, that unfortunately the argument is given up, and the queries remain yet unanswered.

We propose to convince every one who will read with any attention, that Mess. Paca and Chase have not answered; nor cannot answer, the two fundamental, and leading queries, proposed to them by Mr. Boucher. The two queries are; 1st, By what authority do you act as Vestrymen? 2^{dly}, Is there any Law to give a sanction to your power? And, the Gentlemen give this precise answer; "By authority of the Parishioners founded upon Common Law and Common Right, who chose, nominated and appointed us Vestrymen of St. Anne's parish, according to the ancient usage and custom of the parish beyond memory of man." Mess. Paca and Chase hold the Act of Assembly 1701-2, ch. 1. to be a perfect nullity; this Law therefore, must be laid entirely out of the argument. They have been driven to a miserable expedient of founding the right of the Parishioners to choose Vestrymen, upon Common Law—Custom—and immemorial Usage. By Lawyers! The direct contrary however, of the Gentlemen's Law, is true; namely, that, by the Common Law, by Custom, or by Usage, the Parishioners of St. Anne's have no right to choose Vestrymen.

It may perhaps, be no less curious, than useful in the present dispute; if we give a short memoir of religion, and if we trace the origin of vestries, in this Province. The Charter was granted in the year 1632; and, in the following year, the young Lord Proprietary brought with him into this Province, about two hundred persons, who imported with them the CHRISTIAN RELIGION. So early as the Assembly which met on the 25th February 1638, a Bill, entitled, "An Act for Church liberties," was twice read in Assembly; but, it did not pass into a Law till the year 1640. By the Act of Assembly 1640, ch. 1. entitled, "An Act for Church liberties," it was enacted, that, "His Church within this province, shall have and enjoy all her rights, liberties and franchises, wholly and without blemish." Thus stood the Law till 1649, when the CHRISTIAN RELIGION was established by Act of Assembly. The Law 1649, ch. 1. entitled, "An Act concerning religion," is no less curious, than the regulations established by it, are of the most important nature. It is well abridged in Bacon's Laws; and, is worthy of perusal. This Act of Assembly after reciting,—"That the enforcing the conscience in matters of religion hath frequently fallen out to be of dangerous consequence;—and the better to preserve mutual love and unity among the inhabitants; enacted, "That no person or persons whatsoever within this province, professing to believe in Jesus CHRIST, shall from henceforth be any wise molested or persecuted for or in respect of his religion, nor in the free exercise thereof within this province, nor, any way compelled to the belief or exercise of any other religion;" &c. This Act was confirmed as a perpetual Law, by the Act of Assembly 1676, ch. 2; and it continued and was the Law of the province, till virtually repealed by the provisions of the Act of Assembly 1692, ch. 3. and expressly repealed by the Law 1692, ch. 84. The majority of the inhabitants till about the Revolution in this province in the year 1689, were Roman Catholics; the other part of the inhabitants consisted of various other sects of Christians; and the words of the Law 1649; prove there must have been great variety. From the settlement of the province in the year 1633, till 1692, there were no parishes in this province; for, no Law can be shown, by which they were erected, and an Act of Assembly was then made for this purpose. There were no Clergymen established by Law; for there seems to have been no legal provision made for them, and they subsisted by the voluntary contri-

butions of their disciples. And, there were no Vestries, or Vestrymen; for, the various sects of Christians, who then lived in the province, the Church of England excepted, have no such officers. Antecedent then, to the year 1692, there were no Vestrymen in this province, chosen by the Parishioners, under a right founded in Common Law—Custom—or immemorial Usage. Yet, we ought naturally to find such Laws governing in so early a period of our history. The truth is, Vestries, and the right to choose Vestrymen, have their origin from positive Law;—in an Act of Assembly of the province.

By the Act of Assembly 1692, ch. 2. the Church of England was first established in this province. An abridgment of this Act is in Bacon's Laws; and ought to be perused. The county Justices were required by this Law, to lay out their several counties into parishes, by metes and bounds. The parishes being thus laid out, and erected; the Freeholders of each parish were required, to meet by appointment of the county Justices, and make choice of six of the most able men of the parish, to be a Vestry; and the several vestries thus chosen, are by this Law incorporated. Here then, is the true origin and first establishment of Vestries in this province; and the Freeholders first empowered to choose Vestrymen. The right in the Freeholders to choose Vestrymen, is not founded in Common Law; because, as hath been proved, it is derived from Act of Assembly. This right is not founded in Custom; because, we have shown the time, when no such custom prevailed, and have shown the origin of the right. It cannot be derived from immemorial Usage; because, we have proved the origin of it, to be from positive Law. And, "We presume to assert;" the following propositions to be in no veritable Law; 1st, That where a power is originally given, (for example, to elect Vestrymen,) by Act of Assembly, which expires, or is repealed; the power thus originally given no longer remains; nor, can such power be any longer exercised. 2^{dly}, That the power thus given cannot be exercised by Common Law, after the expiration of the Act of Assembly; inasmuch as, the very Act of Assembly itself is a proof, that before it was enacted, there was no such power by Common Law. 3^{dly}, That it is essential to every legal Usage, or good Custom, that it have been beyond memory of man. 4^{thly}, That if any one can show the beginning of it, it is no good Custom, or legal Usage. THE LAWYERS may, if they please, controvert these propositions of Law.

The Act of Assembly 1692, ch. 1. continued in force, till finally repealed by the Act 1700, ch. 1. which was itself repealed, by the Act 1701-2, ch. 1. From the year 1692, till 1702, the Freeholders were empowered to choose Vestrymen, by the sundry Acts of Assembly just mentioned. The Act 1701-2, ch. 1. being "most clearly void," as is held by Mess. Paca and Chase; there is now no Act of Assembly, or other Law of the province, by which Vestryment can be chosen; or, under which, they can act with any propriety. For, according to the first proposition of Law; the several Acts of Assembly, which empowered Freeholders to elect Vestrymen, being either repealed, or "most clearly void;" the power thereby given, no longer remains. According to the second proposition of Law; the power to elect, thus given by Act of Assembly, cannot be exercised by Common Law, after the expiration, or nullity of such Act of Assembly. According to the third and fourth propositions of Law;—the power to elect Vestrymen cannot be exercised by Custom—or Usage; inasmuch as, we have shown a time when such Usage did not exist. "Which was the point to be proved!"

But, Mess. Paca and Chase will have it, without rhyme or reason, that the Parishioners of St. Anne's, by Common Law, and according to ancient Usage and Customs; may nominate and elect Vestrymen; and they assert, that St. Anne's is an ancient parish, erected and established beyond memory of man. By Lawyers! St. Anne's parish was laid out, and erected, by the Act of Assembly 1692, ch. 1.—the first Vestrymen of it were elected and chosen, by virtue of the powers, and according to the mode prescribed by this Law; and, the succeeding Vestrymen of St. Anne's were always chosen by virtue of the powers given by the Acts of Assembly subsequent to the Law of 1692, till the unfortunate nullification of the Act 1701-2, ch. 1. by the annihilating say so of Mess. Paca, and Chase. But, it hath been shewed, that St. Anne's parish did not exist, before the Act 1692; therefore, a Common Law right of choosing Vestrymen, could not exist before the year 1692. Subsequent the Act 1692, the authority, or power of choosing Vestrymen in St. Anne's parish was given by sundry Acts of Assembly, which are now expired; therefore, the Parishioners of St. Anne's have no power—or authority by Common Law—Custom—or Usage, to nominate and elect Vestrymen.

Where shall we apply to know what is, or is not; Common Law—Custom—and immemorial Usage of the province? Mess. Paca and Chase will desire us to apply to THE LAWYERS. This might perhaps, be not on y expensive, but unsatisfactory too, in these doubting days. We advise every man to consult his own common sense; we desire every person who hath acted as a Vestryman, to ask his own understanding—Whether, the Freeholders meet on Easter Monday to choose Vestrymen

by Common Law? Whether, the oath of a Vestryman, when chosen, was administered by Custom? Whether, the oaths to the Government were administered to them, by immemorial Usage? Or, if all these have not invariably been done for upwards of seventy years, under the reprobated Act of 1701-2. And we call on the World (Mess. Paca and Chase excepted) to give evidence, whether they ever knew a Parishioner of St. Anne's, not being a Freeholder within the same parish, and contributing to the taxes and charges of the same, vote at the election of a Vestryman; and, whether any than such Parishioners, as are just described, actually voted for Mess. Paca and Chase, as Vestrymen of St. Anne's. If all this is not satisfactory, let our Acts of Assembly be consulted. To indulge the indolence of those, whose love of ease is stronger than their curiosity, we have looked into the full wing Acts of Assembly, for laying out and erecting new parishes; namely, 1704, ch. 96. 1725, ch. 10. 1726, ch. 6. 1728, ch. 15. 1728, ch. 19. 1742, ch. 15. 1742, ch. 18. 1744, ch. 3. 1744, ch. 14. 1744, ch. 24. 1753, ch. 15. 1765, ch. 33. 1770, ch. 18. of 1st Sess. 1770, ch. 9. of 2^d Sess. These Acts of Assembly are the only Law, which occur to us, or seem to have been enacted, for laying out and erecting new parishes, from the year 1704 to 1770 inclusive. It is no less remarkable, than satisfactory, that there is in every of the Acts just recited, a particular clause, expressly empowering the Freeholders of the several new parishes, to choose and nominate Vestrymen, and other officers. This unquestionably proves, that in all these years when the several Laws just mentioned were made, the Freeholders or Parishioners could not by Common Law—Custom—or Usage, choose and nominate Vestrymen. For, if there had been then any Law in the province for such purpose, there would have been no necessity for a new and express Law. It is an act of idiotism, or the play of children, to make a new Law, where there is one for the same purpose already in force. It would be indecent to suppose the General Assembly guilty of such an absurdity; and it would be uncharitable to presume, that Mess. Paca and Chase spend their time, and the People's money in Assembly, so perfectly idle, or so ridiculously absurd.

But tho' Mess. Paca and Chase have been driven by despair, to assert Law doctrines, which upon "sedate reflection," they must treat not only with contempt; but detestation. Yet, when chosen, they did not consider themselves as nominated and elected Vestrymen by the Parishioners of St. Anne's, by authority founded in Common Law—Custom—or Usage; inasmuch as, they were sworn in, and acted, under the Law 1701-2, ch. 1. For, two facts are incontrovertible; 1st, they took the oath of a Vestryman, contained in, and prescribed by this Law; 2^{dly}, they took the oaths to the Government, in the manner required by it. If these several oaths, were not administered by virtue of the Act 1701-2; no Law whatsoever can be shown, which requires, or justifies the administration of them. But the subsisting Act of Assembly 1715, ch. 30, puts this matter out of doubt. For, it recites §. 3. "And whereas by an Act of the General Assembly of this province, made the sixteenth day of March, in the year of our Lord one thousand seven hundred and one, entitled, "an Act for establishment of religious worship in this province &c. it was enacted, that all Vestrymen should subscribe the association before they should be admitted to the execution of that office; but for as much as by the death of his most sacred Majesty, King William the Third, the subscribing the said association is not necessary to be longer continued; be it therefore enacted, that such part thereof, and clause in the before recited Act of Assembly, which relates to the Vestrymen subscribing the Association, AND NO MORE, is hereby repealed; and declared void. And it is further enacted, that all and every person and persons that are at this present time Vestrymen in this province, and all other person or persons that for the time to come shall be elected or chosen Vestrymen, shall take the before recited oath of abjuration; AND THAT IT BE ADMINISTERED TO THEM ACCORDING TO THE FORMS AND METHODS PRESCRIBED IN THE AFORESAID ACT OF ASSEMBLY for taking the oaths therein required to be taken; and after the taking such oaths, the person so elected and chosen, shall be deemed and taken as one of the Vestry, AND NOT BEFORE." Either then, the above oath was administered to Mess. Paca and Chase, "according to the forms and methods prescribed" in and by the Act 1701-2; or, it was not. The Gentlemen may choose either side, of this exquisite dilemma: If they were sworn in Vestrymen according to the forms and methods prescribed by the Act 1701-2; they have acted under a Law, which, they hold most clearly void; they give up the argument, and, as they happily express themselves, "must knock under". If they did not take such oath, as prescribed; then, they were not Vestrymen. For, faith the Law just recited, "AFTER taking such oath the person so elected and chosen shall be deemed and taken as one of the Vestry, AND NOT BEFORE." If they were not Vestrymen, they could not constitutionally tax the people, nor, could they act under the Acts 1704, and 1729.

Mess. Paca and Chase, having proved, as they flatter themselves, that the vestry of St. Anne's was a legal and constitutional vestry, independent of the Act

January 12, 1773
the Subscriber, if fair, if not
at his Plantation near Queen-

with the Stock, consisting
Hogs, and Sheep, and
for Sterling Cash,
or Current Money.—The
CLOCK.

STOCKETT WILLIAMS.

to the Estate of Colonel
of Baltimore County, de-
e, or Book Account, are de-
mediate Payment, and those who
it said Estate, are desired to
sted, that they may be ad-

CLARE YOUNG, Executrix.
December 19, 1772.
the Subscriber, living near Pis-
Prince-George's County; some
at, a Negro Man, named
Fellow, about Five Feet Six
n, and Twenty-five Years of
orn Countenance at any Time.
d, but is otherwise a sprightly
calls himself John Gladding;
that he may now pass by that
able that he may have changed
ly done before; he carried a
wearing Apparel as Plantation
ve, but it is supposed that they
quite worn out, and that he
Cloaths that cannot be parti-
ve Reason to think he is com-
ome where in the Neighbour-
as he pretended to have Rela-

nds the said Negro, and will
Thomas Clagitt in Piscataway,
of Forty Shillings, if he is
Miles from home, besides what
ad Five Pounds if taken at a
nd delivered as aforesaid, in-
owed by Law: Or I will give
curing him in any Jail, so that

BENJAMIN HARRIS.
DOLLARS REWARD.

burg, Virginia, Dec. 23, 1772.
Instant from the Subscriber,
lvania County, Virginia, a Ne-
BOB, of a yellow Complexion,
Years of Age, and Six Feet Two
n, when he went away, a white
a Snuff coloured Cloth Jacket,
Breeches: He carried with him,
and sundry fine Shirts and
H. I am informed he has a
William Smith, and goes for a
Name of Robert Alexander. He
have a Discharge, and says he
Augusta County; but I do here-
Slave for Life; I am informed
veling towards Philadelphia.
im up, and secures him in any
Notice thereof, shall have the a-
by

WILLIAM HISLOP.
of Vessels are hereby forwar-
n on Board.

December 21, 1772.
to the Jail of Charles County,
of this Month, a Negro Slave,
WILL, and says he is the Propri-
Odin, of Anne-Arundel County,
in Annapolis, he is a very likely
out 5 Feet 8 Inches high: Hat
red (as I take it) Man's Cloth
es, Osnabrig Shir, a Pair mixed
Shoes and Buckles, and an old
the Edge with Linnen.
aforesaid Negro, is desired to take
Charges, to

LIAM HANSON, deputy Sheriff.
Baltimore, November 24, 1772.
B E S O L D,
Hundred Acres of Land, in Five
rcels, situated in Baltimore County,
perty of Mr. Edward Fell, some
ore-Town, Merchant, deceased, and
n. The respective Parcels are situ-
contain in Acres as follow, viz:
on Britain's-Forest, near Mr. Tho-
containing 300 Acres; Fell's Sewall-
side of the little Falls of Gunpowder
ale, near the Head of Patapsco Falls,
n the North Side of Morgan's Run,
ement, on a Branch of Little Pipe
a Lot of Ground, containing about
the East Side of Jones's Falls in Bal-
ich is a Brick House. Proposals for
particularized Lands, or Part of the
ceived and answered, and a good or
made to any Purchaser of them, by
HENRY THOMPSON.

and SON