

MARYLAND GAZETTE

THURSDAY, FEBRUARY 11, 1773

TO THE PRINTERS

The enclosed papers have been lately sent to us, as copies of the Address of the Clergy to the Governor and his Reply, which we request you to publish in your next Gazette for the consideration of the publick.

Your humble Servants, ANNAPOLES, February 6, 1773. SAMUEL CHASE, WILLIAM PACA.

MAY IT PLEASE YOUR EXCELLENCY,

THE CLERGY of the established Church in this your Government of Maryland, now met in Annapolis, beg leave to approach your Excellency, gratefully to acknowledge, not only your many personal civilities to ourselves, but what we more esteem, the obliging attention you have been pleased to show to the interests of the Church Concerned, as we are by duty, as well as inclination, to promote these interests, we conceive, we can, in no way, more effectually accomplish this, than by deposing ourselves, so as to deserve the continuance of your Excellency's favour and protection; with this view, therefore, we take the liberty of laying before you an account of the business, for which this meeting was called together.

THE ORIGINAL intention of our meeting was farther to consider on the charitable fund, but finding ourselves obliged to postpone this, on account of the Charter not being yet arrived, we have been naturally led to consider the present circumstances of the Maryland Clergy, and after the fullest and maturest deliberation, we have unanimously resolved, that it is highly becoming you, to make an effort, as far as in us lies, TO INTRODUCE, IF POSSIBLE, EPISCOPACY, into America, a measure so highly reasonable, so absolutely necessary, at this crisis, in the Colonies in general, and we hold, to Maryland in particular, and so peculiarly benefiting the Clergy of this Province, to be amongst the foremost in soliciting, that we can not doubt of its meeting with your Excellency's perfect approbation; for it must have occurred to you, as it has to us, that, of late, the growth of Sectaries (chiefly in the Episcopal, as we believe, to the disadvantage of a regularly governed Clergy) has been so amazingly rapid, and their conduct so daring and vexatious, that, amongst other instances of their factious spirit, they now daily and openly call in question even his Lordship's right of PRESENTATION, an evil, which we fear, will daily increase, and which, we cannot but think, can only be put a stop to, BY THE ADJUSTION OF AN AMERICAN BISHOP.

It must then be obvious to your Excellency, that the ESTABLISHMENT HERE, cannot subsist much longer without some form of government. Whether this shall be that constitutional one, by BISHOPS, to which alone a Clergyman of the Church of England, can in conscience, think it his duty to submit, or the UNCONSTITUTIONAL AND PALPABLY PRESBYTERIAN SYSTEM, NOT LONG AGO WARMLY CONTENDED FOR BY BOTH HOUSES OF ASSEMBLY, is a question, hardly less interesting to the civil government of this province, than it is to its CLERGY, the jurisdiction of a Bishop, had every other jurisdiction, in its principles a kin to it, is so adverse to the whole frame and scope of our excellent establishments, both in Church and State, that, in attempting to keep it for ever at a distance from Maryland, we trust your Excellency will consider us, as doing what most undoubtedly it is our duty ever to do, consulting the best interests of the Lord Proprietor, and the welfare of the community at large, as well as our own in particular. On these principles, and on these considerations alone, we presume to solicit your Excellency's concurrence and assistance in promoting a SALUTARY SCHEME, EVERY STEP in our power, conducive thereto, we have taken: we have applied to the Throne, to Lord Baltimore, to his Grace of Canterbury, and to the Bishop of London; copies of which application, we think it incumbent on us, to lay before your Excellency, with a request that you will be pleased, as soon as may be, to transmit our letter to Lord Baltimore, and should it be in your Excellency's power to lend a helping hand to the furtherance of this good design, as we believe, it greatly is, we persuade ourselves, from the assurances we have heretofore had the honour to receive from your Excellency, and which we do, and ever shall, gratefully remember, that you will not withhold it. One instance there is, in which we conceive it is much in your power to promote the cause, and that is by co-operating with us in our application to the Brethren of the Clergy in Virginia, by recommending it strongly to the attention and countenance of Lord Botetourt.

We are not so sanguine as to flatter ourselves with the hope either of immediate or certain success from this our application; but should we after all, finally fail, which we pray HEAVEN TO AVERT, we shall

comfort ourselves with the reflection, that even to fail, is less reproachful, than never to attempt at all.

We are, Sir, with infinite respect, Your Excellency's most obedient, And faithful humble servants, Signed per order, ROBERT READ, Secretary.

GENTLEMEN, Annapolis, 11th September, 1770. THOUGH your Address I think imports that it is the act of the WHOLE CLERGY of the established Church, flowing from their general deliberation, and unanimous opinion, yet to enable me to consider it with propriety in this light, a clearer satisfaction is requisite, than what arises from the delivery of a paper by the Clergy, or from the formal attestation of a person in an official character, unknown in our constitution, and assumed, I know not on what grounds, the proper satisfaction would have been given by the subscription of the Clergy individually.

That the FACTIOUS spirit of the sectaries has appeared in their daily, openly calling in question, his Lordship's right of patronage, in disposing of the donations of this province, your address gives me the first information. Indiscretions and irregularities of another kind have indeed occurred in some parishes, but his Lordship's right has been vindicated, and the Laws are a sufficient security to his Lordship, and the persons collated by him. NO DEGREE OF SUPPORT OR ASSISTANCE IS NEEDED FROM EPISCOPAL AUTHORITY. How far, and under what forms, the ESTABLISHMENT OF AN AMERICAN BISHOP may be a SALUTARY MEASURE is a consideration of the most momentous concern, deserving the most serious and mature attention, and being of so great and extensive importance, I shall take an early opportunity of laying the matter before the General Assembly, together with your address; and the papers attending it.

The motives both of duty and inclination will ever engage me to countenance the worthy Ministers of the established Church, and to support the just rights of the Clergy of Maryland, holding it at the same time to be my indispensable duty to protect all quiet and peaceable subjects of every denomination in the full enjoyment of their rights.

To the Reverend Messieurs M'Gill, Addison, Hamilton, Robt. Neill, Read, Allen, Hughes and Boucher.

HOW do you and yourself, Mr. Editor, busily employed I guess, having plenty of materials before you to work upon. Let me expostulate a little with you however, when you are at leisure, and ask, why all your ill-nature against me? Does every person fall into contempt that has spirit and resolution enough to espouse the cause of his friend in opposition to your sentiments? He may do so with you and two or three others, but it can never be reason sufficient with the rest of the world. Who gave you authority to assume the rod for the chastisement of a man equally free with yourself, and who is not in a state of subjection to your humours? 'Tis possible you may be obliged to turn pedagogue in good earnest notwithstanding appearances. Stranger things have come to pass. Remember the tyrant Dionysius kept school at Corinth. He little expected such a reverse of fortune whilst he was loading it in an imperious manner over the citizens of Syracuse. Tell me also if you please, from what quarter you received your authentic information, that it was from the first the scheme that the same breath which raised the bubble should dissolve it, after it had lived to fulfil all its purposes of overbearing. Many of your fellows, distinguished for their sincerity, are concerned to know the truth of this assertion; they will scorn to desert the person alluded to by your factious party scribbler. I pass slightly over your Address to me at present, and am waiting with great eagerness to receive your whole fire; flattering myself at the same time that you will not be able, with all your knowledge in polite literature, to make appear that an individual means the whole body of Merchants, or that any reflection was intended against them. Your compliment, wishing me a happy New-Year, is unseasonable after Candlemas day, therefore, I give you no thanks. By way of return for your ironical civility, let me whisper a piece of advice in your ear. Go to sleep; you are only doing mischief.

The following is the opinion alluded to by the Rev. Mr. Boucher, in his reply.

Have the Vestry of St. Anne's parish in Anne Arundel County, a right to act in virtue of any custom in that parish, independent of the Law of 1702-3.

A VERY ingenious opinion having been already given on the subject, attention is due to the arguments advanced in its support, and as it might

be deemed arrogant to combat particular reasoning by general assertions, I shall consider the points with unaffected candour, and diffidence.

It is said that the Vestry of St. Anne's parish do not claim a right of acting under any authority derived from the provincial legislature; but deduce it from custom time immemorial, or beyond the memory of man. That the existence of Vestries being independent of the Law of 1702-3, the origin of their establishment has been mistaken, and inconclusive reasoning urged from erroneous principles, the premises being denied from which the inferences are drawn. It is however admitted that the power of taxation is exercised solely under the Acts of 1702 and 1729, consequently if they are insufficient to justify the measure it must be considered as insupportable.

To constitute a custom it is alleged there must be an usage time immemorial, or beyond the memory of man; a power of taxation could not therefore with any propriety be claimed under a customary right since the year 1729, as it would be an infraction of the rule ascertaining the length of time necessary to establish a custom; this right is therefore asserted under the Acts of 1704, c. 34, and 1729, c. 7.

Admitting the definition of a custom to be right in general, the argument from it, appears to me erroneous. It is said that the Vestry having acted time immemorial, this usage constitutes a custom, and establishes their authority; the conclusion therefore follows from the doctrine advanced, that there could be no existing custom, antecedent to such immemorial usage. It is then to be considered, whether at the time of passing the Acts of 1704, and 1729, such custom had prevailed, and the Vestry of St. Anne's parish was then established under it. According to the maxim and mode of reasoning in the opinion no such custom could have existed, and consequently the superstructure raised on this hypothesis has no real foundation. Vestries were first appointed and their continuance regulated by the Act of 1692, since repealed, but the church in St. Anne's parish was not erected until the year 1699; however admitting the inception of their authority to be computed from that Law, the intermediate time from this era to the years 1704 and 1729, will not amount to a sufficient duration (by the rule admitted) to establish a custom.

The only Law now in force for the appointment of Vestries is the Act of 1702-3, for the establishment of religious worship, &c. if they did not exist under this Law at the times of passing the Acts of 1704 and 1729, they had no existence whatever; when these Laws were enacted, for there could not then have been any custom, and consequently, if (as is asserted) the Law of 1702-3, is a nullity, the Acts of 1704, and 1729, from which the power of taxation is derived, referred to non-existent; they were improperly termed Vestries, and the persons who composed them were rather illegal assemblies arrogating to themselves the exercise of an unconstitutional authority. The Acts of Assembly urged to countenance the supposed right, conferred the powers therein mentioned on VESTRIES, but, it seems, there were at those times no such institutions; their existence, as contended, depending altogether on custom, if there was no custom, they could not have any existence. In 1704 and 1729 there was no such custom as alleged, because (according to the maxim) an immemorial usage had not then prevailed, and if there were no Vestries at those periods, how could powers be conferred on them in virtue of the Laws referred to.

Whether there were any parishes antecedent to the Act of 1692 is immaterial, as Vestries are by no means essential to their constitution, and if the fact could be affirmatively proved, to give the inference from it any appearance of weight; it must be also shown that Vestries were established, and that their number, qualification, mode of election, and official oath were conformable to the usage which now prevails, for that can never be deemed a custom which is subject to mutation. I believe it can be fully evinced that Vestries did not exist in the province before the Law of 1692, the regulations in that Act are different from those prescribed by the Law in 1702-3, by the latter the Vestry of St. Anne's have always governed themselves in every respect, and the several members of the corporate body have constantly taken the oath there directed; if this Law is held a nullity, it is notwithstanding sufficient evidence, of the time when Vestries according to the present usage were created in the parish, and to remove the presumption arising from it, there must be proof that Vestries governed themselves in the same manner antecedent to the time it was enacted, that the minister was always the principal Vestryman, and the same oath taken by the succeeding members, &c. &c.

The legal import of the term custom appears to have been mistaken, in common parlance, beyond the memory of man, or time immemorial may signify past transactions not in the remembrance of persons then living, but in Law it more properly respects an usage, whose origin cannot be shown, and where the proof of the right claimed depends on the immemorial custom, and uninterrupted exercise of it; a custom has been metaphorically compared to the Nile's white branches, and

THOMAS DUCKETT.

JOHN DE BUTTS.

THOMAS HARWOOD, junr.

JOHN BRICE.

H. RIDGELY.

E. DAVIDSON and JOHNSON.

FREEMAN.

and SON.