

Antilon asks, "What did he (Ogle) deserve, infamy, death, or exile?" No, not quite so severe a punishment, Antilon; he only deserved to be removed from his government, and not even that punishment, if he was directed, advised, and governed by such a minister as thou art; for in that case, the disgrace, and removal of the minister would have been sufficient, and would probably have restored ease, security, and happiness to the people. But if Eden should follow Ogle's example, what then? Eden is a Governor, a Governor is a King, and a King can do no wrong, ergo, a Governor may cut the throats of all the inhabitants of Maryland, and then pick their pockets, and will not be liable to be punished for such atrocious doings; excellent reasoning! exquisite wit and humour! If you, Antilon, didst still be hardy enough, to continue to inspire the same counsels, which have already set this province in a flame, and the Governor, when warned, and cautioned against your pernicious designs, should still listen to your advice; in opposition to the inclination and wishes of the people, over whom he has the honour to preside, I confess, I should be one of those, who would wish it with for his removal; Does this look like flattery, Antilon? I scorn the accusation. The first Citizen has always treated his Excellency with that respect, which his station commands, and with that complaisance, which is due from one gentleman to another; to flatter, or to permit flattery, is equally unbecoming that character; Antilon accuses the confederates, of favouring severity, extravagant adulation, and the meanest devaluation; yet this very man is not entirely exempt from the imputation of flattery—"They know not the man, whom they thus treat."

Cui, male si palpere, recalcat undique tutus;

was an artful compliment paid by a courtly poet to the tyrant A. guttus.—Ye, Antilon, I know the man; I know him to be generous, of a good heart, well disposed, and willing to promote, if left to himself, the happiness and welfare of the province; but youthful, unsuspecting, and diffident of his own judgment in matters legal and political (P): failings (if they deserve the name) that have caused him to repose too great a confidence in you; from this opinion of the man, from a persuasion of his good intentions, I was induced to apply to him, the maxim of the British constitution, "the King can do no wrong," which you have so wittily, and humorously ridiculed. The Governor is a King; wonderful discovery! Who said he was? You comprehend the full force, and justice of the application, and you best know the reason of it; in order to elude, and defeat its aim, you affect to be witty, and not to take my meaning. You want to shelter yourself under the protection of the Governor, and to draw him, and all the Council, into a justification of measures peculiarly yours, by endeavouring to make them responsible for your counsels. "There can be no difficulty in finding out his (the King's) ministers; the Governor and Council are answerable in this character; he cannot disavow an act, to which his signature is affixed." Have not many Kings of England revoked, and cancelled acts to which their signatures were affixed? Have not some Kings too, at the solicitation of their parliaments, disgraced ministers, who advised these acts, and affixed to them the royal signature? The Governor is improperly called the King's minister; he is rather his representative, or deputy; he forms a distinct branch, or part of our legislature; a bill though passed by both houses of assembly, would not be law, if dissented to by him; he has therefore the power, *loco Regis*, of assenting, and dissenting to laws; in him is lodged the most amiable, the best of powers, the power of mercy; the most dreadful also, the power of death. A minister has no such transcendent privileges—To help, to instruct, to advise is his province, and let me add, that he is accountable for his advice, to the great Council of the people; upon this principle, the wisdom of our ancestors grounded the maxim, "The King can do no wrong." They supposed, and justly, that the care and administration of government would be committed to ministers, whom, abilities, or other qualities had recommended to their sovereign's choice; left the friendship and protection of their master should encourage them to pursue pernicious measures, and left they should screen themselves under regal authority, the blame of bad counsels became imputable to them, and they alone were made answerable for the consequences; if liable to be punished for male-administration, it was thought, they might be more circumspect, diligent, and attentive to their charge; it would be indecent and irreverential to throw the blame of every grievance on the King, and to be perpetually remonstrating against majesty itself, when the minister only was in fault. The maxim however admits of limitation.

Est modus in rebus; sunt certi denique fines, Quos ultra, citraque, nequit consistere rectum.

Should a King, deaf to the repeated remonstrances of his people, forgetful of his coronation oath, and unwilling to submit to the legal limitations of his prerogative, endeavour to subvert that constitution in church and state, which he swore to maintain, resistance would then not only be excusable, but praise worthy, and deposition, and imprisonment, or exile, might be the only means left, of securing civil liberty, and national independence. Thus James the second, by endeavouring to introduce a arbitrary power, and to subvert the established church, justly deserved to be deposed and banished.

The revolution, which followed, or rather brought on James's abdication of the crown, "is justly ranked among the most glorious deeds, that have done honour to the character of Englishmen." In that light the first Citizen considers it; and he believes the Independent Whigs entertain the same opinion of that event, at least, nothing appears to the contrary, save the malevolent insinuation of Antilon. It is high time to return to the Proclamation; your digressions, Antilon, which have occasioned mine, shall not make me

lose sight of the main object. "It is not to be expected that any man will bear reproaches without reply, or that he, who wanders from the question, will not be followed in his wanderings, and hunted through his labyrinths." We have seen, the Proclamation was apprehended some time before its publication, and guarded against by a positive declaration of the lower house—"The people of this province will ever oppose the usurpation of such a right." Nevertheless our ministers, regardless of this intimation, advised the Proclamation. It came out soon afterwards clothed with the specious pretence of preventing extortion in officers. I shall soon examine the solidity of this softening palliative.

In a subsequent session, it was resolved unanimously by the lower house, "to be illegal, arbitrary, unconstitutional and oppressive." It was resolved also, "That the advisers (D) of the said Proclamation are enemies to the peace, welfare and happiness of this province, and to the laws and constitution thereof."

I shall now give a short extract from Pety's *Jus Parliamentarium*, page 327, and leave the reader to make the application.—In a list of grievances presented by the commons to James the first, are Proclamations, of which complaining bitterly, among other things they say, "Nevertheless, it is apparent, that Proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them, tending to alter some points of the laws, and make them new; other some made shortly after a session of parliament for matter directly rejected in the same session, and some vouching former Proclamations, to countenance and warrant the latter."

The Proclamation is modestly called by Antilon, "a restriction of the officers," at another time, "prevention of extortion," though in fact, it ought rather to be considered as a direction to the officers, what to demand, and to the people, what to pay, than a restriction of the officers. I appeal to the common sense and consciences of my countrymen; do ye think, that the avowed motive of the Proclamation, was the true and real one? If no such Proclamation had issued, would ye have suffered yourselves to be oppressed, and plundered by the officers? Would ye have submitted to their exorbitant demands, when instructed by a vote of your representatives, "That in all cases where no fees are established by law, for services done by officers, the power of ascertaining the quantum of the reward for such services is constitutionally in a jury upon the action of the party?" To set this matter in a clear point of view, and to expose the hollow and deceitful shew of a pretended clemency, and tenderness for the people, it may not be improper to introduce a short dialogue between an officer and citizen.

Officer. How wretched and distressed would have been the situation of this province, if the well-timed and merciful Proclamation had not issued.

Cit. How so?

Officer. The reason is obvious, had it not issued, we should have been let loose on our countrymen to live on free quarter, for every little piece of service we should have exacted a genteel reward; in a short time your pockets would have been pretty well drained, and to mend the matter, we might have pillaged and plundered, without being liable to be sued for extortion; for we could not be guilty of extortion merely in taking money or other valuable thing for our services; unless we were to take more than is due; it is obvious to common sense that there must be some established measure—or there can be no excess—That the term more cannot apply unless what is due be ascertained, there must be a positive, or there can be no comparative; let the fact then be considered, if something be undeniably due, when a service is performed, and no certain rule or measure to determine the rate, should an officer take as much as he can exact, he would not commit extortion according to the legal acceptance of the term extortion.

Cit. This may be good law for aught I know, but if I could not sue you for extortion, I should still have a remedy.

Officer. What, pray?

Cit. I would only pay you what I thought reasonable.

Officer. But suppose I should not think the sum tendered sufficient, and refuse to receive it.

Cit. Why, then you might either go without any reward for your service, or you might sue me, to recover, what in your estimation would be adequate thereto, and thus leave the quantum of the recompense to be settled by a jury.

Officer. This expedient did not occur to me; your condition, I own, would not have been quite so deplorable as I imagined.

The plain answer of this citizen will be understood by many, who will not comprehend the more refined reasoning of the officer upon extortion; and I fancy the citizen's resolution in a like case, would be adopted by most people.—Antilon has admitted that "If the Proclamation had not the authority to fix the rates according to which the officers might receive and beyond which they could not lawfully receive, it was not preventive of extortion, but whether it had or not such authority depended on its legality, determinable in the ordinary judicatories." I should be glad to know whether its legality be determinable by the judges, or by a jury; if determinable by a jury, the liberty and property of the people will be exposed to less danger: were we sure of always having judges, as honest and upright as the present, the question, though of the most momentous concern, might perhaps be safely left to their decision; but our judges are removable at pleasure, some of them might be interested in the cause, and if suffered to establish their own fees would become both judge and party—a Governor, we have seen, decreeing as chancellor fees to be paid upon the authority of his own Proclamation, would fall under that predicament.—Let us admit, by way of argument, that the decision of this question (the legality of the Proclamation) belongs properly to the judges;

suppose they should determine the Proclamation to be legal; What consequences would follow? The most fatal and pernicious, that could possibly happen to this province; the right of the lower house to settle fees, with the concurrence of the other branches of the legislature, a right, which has been claimed, and exercised for many years past, to the great benefit of the people, would be rendered useless, and nugatory. The old table of fees abounding with exorbitances and abuses, would ever remain unalterable; government would hold it up perpetually, as a sacred palladium, not to be touched, and violated by profane hands.

Reasons still of greater force might be urged against leaving with the judges the decision of this important question, whether the supreme magistrate shall have the power to tax a free people without the consent of their representatives, nay I against their consent and express declaration, I shall only adduce one argument, to avoid prolixity.

The Governor, it is said, with the advice of his lordship's council of state, issued the Proclamation; three of our provincial judges are of that council; they therefore advised a measure as proper, and consequently as legal, the legality of which, if called in question, they were afterwards to determine. Is not this in some degree pre-judging the question? It will perhaps be denied, (for what will not some men assert, or deny?) That to settle the fees of officers by Proclamation, is not to tax the people; I humbly conceive that fees settled by the Governor's Proclamation, should it be determined to have the force of law, are to all intents and purposes, a tax upon the people, flowing from an arbitrary, and discretionary power in the supreme magistrate—for this assertion, I have the authority of my Lord Coke express in point—that great lawyer, in his exposition of the statute *de tallagio non concedendo* makes this comment on the word tallagium—"Tallagium is a general word and doth include all subsidies, taxes, tenths, fifteenths, impositions, and other burthens or charge put or set upon any man, that within this act are all new officers erected with new fees or old officers with new fees for that is a tallage put upon the subject, which cannot be done without common consent by act of parliament." The inspection law being expired, which established the rates of officers fees, adopted by the Governor's Proclamation, I apprehend, the people—(supposing the Proclamation had not issued) would not be obliged to pay fees to officers according to those rates; this proposition, I take, to be self-evident; now, if the Proclamation can revive those rates, and the payment of fees agreeable thereto, can be enforced by a decree of the chancellor, or by judgment of the provincial court, it will most clearly follow, that the fees are new, because enforced under an authority entirely new, and distinct from the act, by which those rates were originally fixed. Perhaps my Lord Coke's position will be contradicted, and it will be asserted, that fees payable to officers, are not taxes; but on what principle, such an assertion can be founded, I am at a loss to determine; they bear all the marks and characters of a tax; they are universal, unavoidable, and recoverable, if imposed by a legal authority, as all other debts; universal, and unavoidable, for applications to the public offices are not of choice but of necessity, redress cannot be had for the smallest, or most atrocious injuries but in the courts of justice, and as surely as that necessity does exist, and a binding force in the Proclamation be admitted, so certainly must the fees thereby established, be paid in order to obtain redress." There is not a single person in the community, who at one time, or other, may not be forced into a court of justice, to recover a debt, to protect his property from rapacity, or to wrest it out of hands, which may have seized on it with violence, or to procure a reparation of personal insults.

Why was the inspection law made temporary? With a view no doubt, that on an alteration of circumstances, the delegates of the people, at the expiration of the act, with the consent of the Governor, and upper house, might alter, and amend the table of fees, or frame a new table.

That the circumstances of the province are much changed since the enacting of that law in 1747, the Proclamation itself evinces, by allowing planters to pay the fees of officers in money, in lieu of tobacco, which alternative has considerably lessened the fees, and is a proof, if any were wanting, that they have been much too great. It was insisted on by the lower house, that a greater reduction of fees was still necessary; by the upper, that the fees were already sufficiently diminished, and that they would not suffer any further reduction of fees, than that, which must necessarily follow from the election given to all persons, to discharge the fees in tobacco, or money as they may best suit them. One would imagine that a compromise, and a mutual departure from some points respectively contended for, would have been the most eligible way, of ending the dispute; if a compromise was not to be effected, the matter had best been left undecided; time, and necessity would have softened dissentions, and have reconciled jarring opinions, and clashing interests; and then a regulation by law, of officers fees, would have followed of course. What was done? The authority of the supreme magistrate interposed, and took the decision of this important question, from the other branches of the legislature to itself; in a land of freedom, this arbitrary exertion of prerogative will not, must not, be endured.

From what has been said, I think it will appear that the idea of a tax is not improperly annexed to a regulation of fees by Proclamation; but if the idea be proper, then fees can be settled in no case except by the legislature, because it requires such authority to lay a tax; but the house of lords, the house of commons, the courts of law and equity in Westminster hall, the upper and lower houses of assembly have each of them settled fees—they have for the house of lords, and the house of commons have that

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