

K-T O N R Y,
to inform the Publick,
d Tavern in a neat commo-
pote, situated in East-Street,
James Brice's new Houfe,
venient to the Dock; and
nfall with a good Stock of
odations for Travellers, as
Provender for Hottes, those
o favour him with their com-
utmost Endeavours to give

(XXVIIIth YEAR.)

T H E

(No. 1440.)

MARYLAND GAZETTE.

T H U R S D A Y, APRIL 15, 1773.

to, for the Convenience of
bolis and Baltimore-Town, to
begin the Second Week in
Passengers to and from said
Manner, viz. To set out
said House, on every Mon-
Friday, precisely at Half after
Morning, will stop One Hour
about Half Way to Baltimore,
to Capt. Limes's in Balti-
from said Limes's for Annapolis
day and Saturday Morning,
I wait for any Passengers to
Tavern at the Ferry, and to
where John M'Donall lately
to said Ferry's House in An-
Capt. Limes's, a Person will
ts to Passengers at 10s. each
polis, and the like Sum from
Outside Passengers or any
of Age at Half Price. Seats
for. Small Parcels will be
to Baltimore and from Balti-
onable Rates.

I purchase a Quantity of Rye
s. per Bushel, if delivered at
s, where may be had good
le or Retail, at reasonable
8w

of a LOTTERY,
Dollars, for repairing the
way to The winding Ridge.
ollars. Dollars.

300	is	300
100	are	300
50	are	300
20	are	300
10	are	300
5	are	300
4	are	300
3	are	250
	are	4650
	gain	1350

Dollars each amount to 6000

eme there are not Two Blanks
the Prizes subject to no Deduc-
many of them very valuable,
at the Tickets will very soon be
ly as a great Number of them

egin at Hagar's-Town, on Tues-
s August next if full, or sooner
Presence of Three Managers at
of the Adventurers as choose to

e, Mess. Thomas Griffop, Michael,
Jonatban Hagar, John Swans,
Caldwell, and Richard Yates.
ill be published in the Maryland
be ready to be paid in One
rawing. Those not demanded
will be deemed as generously
ing the aforesaid Road.
ad of any of the Managers.

FOR SALE,
and Lots in which I lately dwelt,
the Court-House Circle in the
they are all well inclosed with
the Houses are mostly new and in
they will be sold for a long Cre-
e Terms may be known by ap-

REUBEN MERIWETHER.
e and Lots are so advantageously
ll known, that I think a minute
needless.

Baltimore, January 16, 1773.
aving any just Claim against the
l. Charles Ridgely, deceased, are
their Accounts, properly proved,
debited to the said Estate, are
come and pay to prevent Expence
Trouble to
CHARLES RIDGELY,
NIEL CHAMIER,
LIAM GOODWIN, } Executors.

and SON.

To SAMUEL CHASE and WILLIAM PACA, Esqrs.
"To transcribe here and there three or four detached
"lines of least weight in a discourse, and by a foolish com-
"ment, mistake every syllable of the meaning, is what I
"have known many of a superior class to these formidable
"adversaries, intitle an ANSWER." SWIFT.



GENTLEMEN,
OW truly the answers you have
been pleased to give me, are
here characterised, I leave it
to every competent judge, who
has attentively read them, to
declare. Observing only, in
my own behalf, that it is infi-
nitely more difficult to reply
to writings, which sound like
sense, and seem to read as if
there was some meaning in them, but, unhappily, fre-
quently labour under a total privation of both, than
those, who have never tried it, may perhaps imagine.
It is to pursue an ignis fatuus, which, though it be
impossible ever to lay hold on, the weary wanderer is
doomed to follow, through whatever dirt it may lead him.

Mindful that I am not writing a volume, but a letter
for a news-paper, which it is neither equitable nor
decent that you and I should totally engross, for the
present, I shall echo only such little gleanings of legal
knowledge as I have been able to pick up; reserving
my remarks on the other particulars of your letter,
some of which are too curious to be overlooked, for
another paper.

Beaten-out of one ground, like true French generals,
you instantly take possession of another, and still make
a shew of defence. The doctrine of usage and custom,
I think, is now given up. Not to under-rate your
abilities, you say, it was indelible and you cite the
very authorities that would have been produced against
you, had you persisted in maintaining it. I do my
best, to understand your mean g. right, when I pro-
pagated the idea, that "your justification rested on the
"single point of custom only;" and, if I erred dexte-
rously, common honesty bids me declare, the merit was
accidental. You have a way of expressing yourself
sometimes in so loose and indeterminate, and some-
times in so perplexed and involved a manner, that
there is more trouble in finding out what you mean,
than in refuting it, when it is found out. If I may
be allowed to give my judgment of your writing, its
merit lies in its being unintelligible. Like the lologo,
or ink fish, you have the art of rendering dark and ob-
scure whatever comes within your vortex. The trea-
tise on the bathos classifies such authors under the de-
nomination of "eels, who wrap themselves up in their
"own mud, but are, notwithstanding, now and then,
"mighty nimble and pert."—But, to return: The
gentleman, whose opinion I asked, saw your justifica-
tion, as well as my question to him, and he understood
you, as I did: two or three other writers in the paper,
and, in short, every body understood you so. I take
no advantage, however, of this finess; being not a-
fraid to encounter you in the strong hold of common
law, and common right, (which I take to be synoni-
mous, the latter being equivalent to, and substituted
for, the ancient term *sole-right*) where you have now
entrenched yourselves. I shall be disappointed, if you
find this more tenable, than the demolished battery of
custom, and *usage*.

Your position, that you were "chosen by the pa-
rishioners of St Anne's, who nominated and elect-
"ed you vestrymen by authority found-upon com-
"mon law, and common right," contains a matter of
fact, and a point of law. If the fact be, that you were
not chosen by parishioners, your law falls to the ground,
even on your own principles. Let us then state this
fact, as it really is. When Mr. Chase was chosen,
some private point was to be cauld—these private
points, I fear, often have too much influence on our
Maryland politics—and there was some controversy
about his election. Sundry parishioners offered to vote,
who were objected to, and none but freeholders per-
mitted. This, I am assured, if denied, may be sup-
ported by affidavit. I take it for granted, Mr. Paca
also was chosen by freeholders only: the general
practice of the country, and my former citation from the
vestry book, warrant the presumption. If he was not,
it is incumbent on him to produce his proofs. In legal
understanding, parishioners and freeholders are dis-
tinct perimages; the fact, therefore, being that you
were chosen by the latter only, your election was ei-
ther unfair, and therefore illegal, or you were not
chosen by authority if unded upon common law,
and common right.

"By common law, say you, the parishioners have
"the government of the parish, and are, for that pur-
"pose, a body politic." Be this granted; it follows
then, that, by common law, every parishioner is, in
some sort, a vestryman. And so he is. A vestry,
"says Burne, properly speaking, is the assembly of
"the whole parish: at common law, every parishioner,
"who paid to the church rate, or scot and lot, and
"whether person, had a right to come to these meet-

ings." The following is the substance of all I can
learn concerning vestries by common law, from Burne,
Parson's law, Wood's institutes, Shaw's parish law,
Godolphin and Gibson, the most respectable authors
on this subject. "Every parishioner, who paid to the
"church-rates, and no other, had a right to vote for
"raising parish rates or taxes. The rates must be
"with the consent of the major part of the parish-
"ners, housekeepers, or occupiers of land. In order
"to which, publick notice of a vestry must be given:
"the meeting is called a vestry, but all the persons
"just mentioned, are not called vestrymen. At such a
"meeting, the business of the parish is transacted, rates
"are laid, and taxes imposed for defraying all paro-
"chial expences. And, for these purposes, the pa-
"rishioners are a corporate body, and may make bye-
"laws," which is incident to every corporate body.
And all this by the common law of England. "If
"any refuse to pay the church-rates, or taxes, being
"demanded by the churchwardens, they are to be
"sued in the ecclesiastical court, and not else
"where." Gibson's codex, 259. D gze, 171. Burne's
justice, 316, 17. The case of Jefferys, 5 Coke's repi
66, 67, which you have cited, proves the same. Coke,
2d inst. 489, says, "By the statute of 13 Edw I, rates
"or taxes for repairs of churches, church yards, pro-
"viding decent ornaments for the celebration of di-
"vine service, are allowed to be ecclesiastical cog-
"nizance." Burne, 327. We have no ecclesiasti-
cal courts in Maryland—and even I join with you in
wishing, that we never may, at least, not as they are
constituted in England—how then can such tax or rate,
on the principles of common law, if refused, be col-
lected? Hence appears the true reason, why the com-
mon law of England, relating to vestries, never pre-
vailed either here, or in any other colony, where the
church of England is established; and why the legisla-
ture found themselves obliged to introduce a different
law.

You have not said, that, by the common law of
England, the parishioners may chuse vestrymen: in-
deed, you have said, and proved the contrary. The
theory of the caluist, Rutherford, is fanciful and
pretty; but it is not the theory of the common law,
which knows of no such delegation of powers, as you
speak of, from the parishioners at large, to a chosen
few. For this, in plain English, is chusing a *select ves-
try*, which yourselves have declared, can-be founded
on custom only. In your former piece, you said, "by
"particular custom, this authority of the whole body of
"the parishioners may be delegated to a select number,
"who are distinguished by the appellation of VES-
"TRYMEN." But now, you disclaim custom, which
alone can justify such delegation, and rely on the com-
mon law, which has no such powers to give.

To give, however, some colour of plausibility to this
inconsistency, you affect to distinguish between tempo-
rary and perpetual select vestries. Now, you have not
proved, that there are any where either such temporary
or perpetual select vestries, "periodically elected by
"the voice of the parish." Burne declares expressly,
that, "in most places, if not in all, the parishioners
"have lost the right of electing such vestrymen."
And, when you say, that such select vestries are of pe-
petual existence, you contradict both Burne and Gibson,
whose doctrine is, that they are "chosen annually, and
"to manage the concerns of the parish for that year."
You contradict yourselves: for, in another part of
your answer, having likened vestrymen to churchward-
ens, you say of the latter, that they are temporary of-
ficers. And the reason of the thing proves, that both
they and vestrymen must be so.

The vestry of St. Anne's is certainly a *select vestry*,
and therefore, as such, never can exist on the princi-
ples of the common law of England. Let us, how-
ever, consider how it is that you have introduced this
common law, such as it is, into this province. Here
too your own authorities make against you: And, I
may apply to myself in this case, what Cicero said of
an opponent of his, in the oration for S. R. Amerinus
—"quod Erucio accidebat in usâ nugatoriâque ac-
"cusatione, idem mihi usu venit in causâ optimâ."
You would have done the celebrated Blackstone far more
honour by quoting him fairly, than by the idle com-
pliments you pay him. His words are, "It hath been
"held, that, if an uninhabited country be discovered
"and planted by English subjects, all the English laws
"then in being, which are the birthright of every
"subject, are immediately in force." And so, refers
to the books, which, to make a parade of your read-
ing, you have also pretended to cite: though the mon-
strous doctrine advanced by one of them, Salkeld, who
puts it into the mouth of Lord Holt, is, that, "the
"laws of England do not extend to Virginia—being a
"conquered country, their law is, what the king
"pleases." Then follow, in Blackstone, these remark-
able words, which you have concealed; "But, this is
"to be understood with very MANY, and very GREAT
"restrictions. Such colonists carry with them so much
"of the English law, as is applicable to their own si-
"tuation, and the condition of an infant colony;
"such, for instance, as the general rules of inheri-
"tance, and of protection from personal insults."
The same language is held by a great judge in the case

of the King against Samuel Vaughan, determined 17th
Nov. 1769. Lord Mansfield, in delivering his opinion,
says, "To be sure, no act of parliament, made in
"England, binds Ireland, or a colony actually settled,
"without naming them: but, it is held, all laws of
"England, both common and statute, go to a colony
"newly settled, which were in being at the time of
"such settlement; with this restriction, that they be
"laws suited to their situation and condition; and
"therefore, with this restriction, to be sure, an hun-
"dredth part of the statutes of England don't go to
"the colonies; but, they do go, if they are apposite
"and adapted to their situations and condition, for,
"as they carry the statute law, so they carry the com-
"mon laws, that are applicable." Vaughan's appeal
to the publick, p. 90.

Here then is a criterion, by which we are to deter-
mine, where the laws of England are admissible, and
where not. The common law jurisprudence of Eng-
land, on the subject of vestries, has been stated, as it
is: the obvious question then is, at what period of our
history, was it applicable to our situation, and adapted
to our condition? I aver, that it is incompatible with
our constitution, and adverse to the whole tenor of our
laws.

In 1633, this province was granted as an asylum to
roman catholics; and the majority of the people con-
tinued such, till about the revolution in 1689; so that,
for the first six and fifty years of our history, it is evi-
dent, common law vestries were not suitable to our con-
dition. The terms *parish*, *vestry*, *vestrymen*, or *church-
wardens* are not once to be found in any of our acts of
assembly, antecedent to 1692. The singular act of
1676, ch. 20, seems to shew, that a great point was
thought to be gained, when the private benefaction of
a pious man was appropriated "to the maintenance of
"a protestant ministry, from time to time, among the
"inhabitants of St. George's and Poplar-Hill hun-
"dred;" and is also a good collateral proof, that
there were then no parishes. And, that the common
law of England respecting parishes should prevail,
where there were no parishes, is strange indeed. It
could not prevail, because, it would have been inappli-
cable to the condition of the then colonists, which is the
rule laid down.

By the act of 1692, ch. 2, the church of England
was first established in Maryland. This was but a par-
tial adoption of the church of England establishment:
the form of divine worship, according to the prayer-
book, was received and enacted: the mode of mainte-
nance of the clergy by tythes was rejected; the circum-
stances of the province being supposed to be then une-
qual to the burthen, and the forty per poll (according
to the express words of the law of 1700) given *in lieu
thereof*. The province was divided into parishes, and
churches were ordered to be built. And common law
vestries, being inconsistent with our constitution, were
rejected, and, in their stead, *select vestries* established;
and, says the law, "in any action or actions to be
"commenced as aforesaid, in the writ and declaration,
"and other proceedings of the same, the principal
"vestryman shall be named, together with the other
"vestrymen, as aforesaid, for the parish, especially
"appointed by act of assembly." "Common law ope-
"rates, till suspended, or derogated by statute." Ad-
mitting then, for argument's sake, that, before 1692,
or 1700, there had been vestries by common law
(which, however, I have proved, neither was, nor
could be the case) they could not then exist, inasmuch
as these acts established *select vestries*; of a nature quite
different, and with powers and modes of proceeding
totally dissimilar to the common law vestries. See re-
cord book, LL, No. 1. from 2 to 10.

But, supposing statutes had never intervened, still I
assert, that common law vestries would have been un-
constitutional in this province. You say that, by com-
mon law, such vestries have a right of taxation, and you
say right. Now the exertion of such a right in Mary-
land is absolutely prohibited. The act of 1650, ch.
25, confirmed among the perpetual laws by 1676, ch.
2, is express, that "no aids, subsidies, customs, taxes,
"or impositions, shall hereafter be laid, assessed, le-
"vied, or imposed upon the freemen of this province,
" &c. without the consent of the freemen of this pro-
"vince, their deputies, or the major part of them,
"first had and declared in a general assembly of this pro-
"vince." A resolve of the lower house, in the last
session, is no less positive: "Resolved, that the repre-
"sentatives of the freemen of this province have the
"sole right, with the assent of the other part of the le-
"gislature, to impose and establish taxes &c." This
principle, that taxes can only be raised by the assem-
bly, hath been very strictly attended to; and your vi-
olation of it was my principal charge against you.
The commissioners of the county courts may, and do,
levy taxes, to defray the county charges; but, they
have an express act of assembly, and cannot go beyond
the letter of it. The vestries of Maryland may, by
act of assembly, raise taxes; but they too must adhere
to the letter of the law. Even you ground your rights
of taxation, as vestrymen, on the acts of 1704 and
1729, at the same time that you grant, that vestries by
common law, such as, you pretend, that of St. Anne's
is, may exercise a power of taxation, independent of any