

Answer. The end, or design of settling fees being once accomplished, I apprehend, on the principles I have fully explained, that the rates of them can't be altered, and therefore, if the fees of sheriffs were increased in 1739, the measure was wrong; but I don't know, or believe that the fees of sheriffs were increased in 1739, having searched for the proclamation without being able to find it. In 1735 there was a petition from several sheriffs, to the Governor in council for an allowance of several fees, alleged to have been omitted in the table, settled by the proprietary in 1733, and always established, and allowed either by acts of assembly, or by the governors in council, and the fees so omitted were particularized in an annexed schedule. The order on this petition was, that such of the fees omitted in the table, as had been settled by any act of assembly, or former order, should be allowed to the sheriffs for their service, and no more. If this be the order meant by the objector, it does not justify the idea they would convey, that the sheriffs fees settled by the proclamation in 1733 were afterwards increased for the order extended only to the fees omitted in the table, settled by the proprietary.

Objections. If there was originally an authority, in this province, distinct from the legislative, to settle fees, that authority has been relinquished, because, as far back as 1638, a law passed for the limitation of the fees of officers, and, in 1692, the Governor's power to settle fees was expressly denied by the lower house; who insisted, that "no officers fees ought to be imposed upon them, but by the consent of the representatives in assembly, and that this liberty was established, and ascertained by several acts of parliament, and produced the same with several other authorities. To which the Governor's answer was, that his instructions were to lessen, and moderate exorbitant fees, and not settle them. To which the speaker replied, that they were thankful to his Majesty for the same, but withal desired that no fees might be lessened, or advanced, but by the consent of the assembly, to which the Governor agreed, and an act passed the same session for regulating officers fees." And "fees in this province have been generally settled by the legislature."

Answer. When the Governor, in 1692, undertook to regulate fees, there was an act of assembly for the purpose, and therefore he had no authority. When the last proclamation issued, there was no act of assembly. There was no act of parliament in 1692 to prevent the settlement of fees by an authority distinct from the legislature, when an act of the legislature does not exist, by which fees are settled; but there were various statutes, and authorities to prove, that the supreme magistrate can't controul the operation of an act of the legislature. That this branch of the argument may be the better understood, I shall proceed to show, how fees have generally been settled in this province, observing in the first place, that the charter, under which we derive the power of making laws, contains a grant to Lord Baltimore of "all rights, jurisdictions, prerogatives, royalties, and royal franchises, in as ample a manner, as any bishop of Durham, within the county palatine of Durham, then, or at any time before, had." And also of power "to appoint judges, justices, magistrates, officers and ministers, and to do all, and every other thing belonging unto the complete establishment of justice, courts, tribunals, and forms of judicature, and manner of proceeding."

"Between 1633, and 1637, the officers appointed by Lord Baltimore, for his Governors were authorized by their commissions to demand, and receive such fees, as were usually paid in England, or Virginia for similar services."

In 1637, a bill for fees was framed, but not passed, in 1638 an act passed, in which there is this clause "all fees shall be paid according to a bill upon the record of this assembly, viz. that of 1637. In March 1641, it was continued to the next assembly, in 1642, the day after the session of assembly, a table of fees was settled, and published by the governor, and council, the act having expired, in 1669, on the petition of J. Gorton, for settling the fees of the clerk of the assembly, the Governor, and council ordered that he should receive the fees of a county clerk. "In the year 1676 an act passed for limitation of officers fees; but before this act was framed the lower house were acquainted in a message from the upper that the chancellor's fees were, settled by the then late proprietary, and his present lordship would not consent to an act for settling the same, it being his prerogative; but that the list might be recorded in the journals of the house—whereupon the lower house voted, that they did not desire to intrench on his lordship's prerogative; but all they aimed at was, that the inhabitants might certainly know what fees they had to pay, and since nothing could be more reasonable, than that the same should be settled, and published, they requested his lordship to ascertain the fees of all his officers, and that fair lists thereof might be drawn out with his lordship's assent, and copies sent to the county courts to be published, and recorded, and that an act might be drawn up for fining every officer exceeding the same." Pursuant to this the perpetual act of 1676 passed with this proviso, "if any fees belonging to the several officers, and by the proprietary, or governor, so allowed, and adjudged, and not in this act mentioned, then it shall be lawful to have such fees as the proprietary and council shall allow, and no more; under the penalty &c." and there is a similar proviso in the other acts to the year 1725. In 1692, in a bill from the lower house for recording conveyances, the clerk's fees for the service were rated, to which the upper objected, that "the settling of fees is a matter vested by their Majesties in the governor with the advice of the council." The indefinite act of 1676 fell under the general repealing act of 1692.

Governor Copley was empowered by his commission, and instructions from the crown to settle with the council, the fees of officers. In the commission

"from their Majesties to Mr. Blackiston, in 1692, to be commissary general, he was empowered to receive all such dues, and fees belonging to his office, as should be settled by their Majesties, or their captain general, and council." "Governors Nicholson, Blackiston, Seymour, and Hart, the successive governors, after Copley, appointed by the crown, till Lord Baltimore was restored, were also respectively empowered to settle the fees of officers." I have already observed, that the fees of officers in New-York are settled under a royal commission—In 1733, the temporary act that regulated fees having expired, Lord Baltimore, in council, settled tables of fees, and the rates, thus settled, were adopted by all the courts, and in all their judgments, and decrees prevailed as the rule, in awarding costs from 1733 to 1747, when the first inspection act passed. I have already taken notice of a decree of Mr. Ogle, ordering fees to be paid according to his lordship's settlement—in 1739 the upper house insisted, that "the proprietary's authority to settle fees, when there is no positive law for that purpose, is indisputable, and apprehended the exercise of such authority to be agreeable to the several instructions from the throne to the respective governments." In 1755, the proprietary, asserted his authority to regulate fees, and objected to the inspection act, because the fees of officers were regulated by it, and the lower house being informed of it, in their address to the governor expressed their concern that, "a regulation of fees agreed upon after the most mature deliberation, that had subsisted for five years, been revised, and continued, should be objected to by his lordship, and declared it to be their opinion, that the parts of the act, respecting officers fees, and foreign coins were of great advantage, and highly conducive to the ease, and quiet of the people." Such were the sentiments of the lower house in 1755.

It appears, I presume, from these proceedings, there is but a very slight foundation for the objection, that there has been a relinquishment of any original authority to settle fees—temporary acts, after their expiration, cease to have any controul, and even these acts are the less material, on this account, that the regulations of fees by them had an effect, which no authority but the legislative could give, for as it might be inconvenient to many people to pay the officers immediately for their services, and to the officers, when they give credit to those who employ them, not to have telum remedium (a speedy remedy) for the recovery of their dues, the several acts, regulating the fees of officers, have required a credit to be given, and allowed the fees to be collected by execution. I did presume to say in my last letter, that "the same authority, distinct from the legislative, which hath settled fees, may settle them, when the proper occasion of exercising it occurs," having the countenance of the maxim, "ubi est eadem ratio, ibi est eadem lex" (where there is the same law, where there is the same reason) and if maxims are disputed, there can be no end to controversy: for they can't be proved per notoria. (By any thing more known, or certain.) If it be said that the maxim has not been denied, I must observe that the attempt then was to evade it: for my position is not, that new fees may be imposed by the judges, but that, when fees are due, under a right, coeval with the original institution of the offices, and the sum, or rate is not otherwise fixed, it may be settled by the judges; that their authority in this is necessarily incident to their offices, and that they can't discharge their duty without an actual exercise of it.

The objectors have drawn all the inferences they could, to favour their purpose, from every precedent they have been able to collect, and yet, when apprehensive the argument would be retorted, they would have the proofs from precedents disregarded. Their definition of liberty, if corresponding with their conduct, I suspect, would be "a licence to say, and do, as they please, with a power to controul the words, and actions of others."

Objection. If the fees of some of the officers should not be occasionally reduced, they would in time exceed the governor's income.

Answer. Such an event is not probable. As the governor's income must also increase, with the increase of fees, the trouble, and expence must increase. Stated salaries would prevent this effect. Such salaries were proposed by the upper house, and rejected by the lower.

Lord Coke, and serjeant Hawkins have bestowed great commendations on this mode of provision, because officers, having stated salaries, would be under no temptation to increase, or multiply fees; but our wiser men determined differently. The attorney, and solicitor general of England, serjeant Wynn, and Mr. Dunning have presumed to be of opinion, that there may be a regulation of fees, in Maryland, without an act of assembly; but our wiser men have declared the contrary, and who will be to "daring" as to question their infallibility. "Homines indicium peritissimi investigatores, veri juris, et germanæ justitiæ solidam æstigmatentes, non scientiarum umbras, et imagines sequentes."

Having examined the legal reasoning, with which the profound knowledge, eminent candour, and immense patriotism of his learned, and very worthy associates have supplied him (associates whose honest indignation is naturally roused by every breach of the laws, which have been ordained, in the clearest terms, to prevent exaction of excessive fees, because they have exhibited the most conspicuous examples, of their own pure moderation, and strict observance of them) I shall now more immediately address the first Citizen.

"His grave observation, that the prince, who places an unlimited confidence in a bad minister, runs great hazard of having that confidence abused &c." has the merit of being true.

"Ille magno conatu magna nugat dixerit."

"The most skilful index-hunters, possessed of the solid model of true laws, and genuine justice, not followers of the shadows, and illusions of science."

"The man in troth, with much ado, Has found that one, and one make two."

But I must, in the most direct terms, contradict all his assertions of the influence of a minister in Maryland; assertions most infamously false, dictated by the most corrupt heart, and persisted in with the most profligate impudence. It is very merciful, indeed, that he has not compared Antilon, with Sejanus—that he has not insinuated there is an Apicius, dives, et prodigus, and included stuprum &c. and that he has only referred to some qualities in the character of Sejanus, which I have the comfort to know are most opposite to the character of Antilon. How plainly do such foul emanations indicate their putrid source? Should I, Mr. Citizen, represent you to be a man "tetra inflatus libidine, et consuetus alienas permotere uxores." (of the most abandoned lust accustom'd to debauch other men's wives) and refer the gentle reader to Trivetis's character of Clodius, would you not be apt to exclaim, "I debauch other men's wives! A what calumny will falsehood, and malice stop? I debauch other men's wives! Nothing in the world can be more remote from my character."

"Unde petitum"

"Hoc in me jactis? Est auctor quis denique eorum"

"Vixi cum quibus?"

"Is there, with whom I live, who know my heart?"

"Who taught you how to aim your venom'd dart?"

"Mea sufficit una."

"I am no rover."—Indeed, Mr. First Citizen, I don't believe you are, any more than I believe you to be a man of honour, or veracity.

Your assertion that the proclamation proceeded from the advice, and overruling influence of one man, I have most expressly contradicted. The governor's declarations have contradicted it. The members of the council know it to be absolutely false—many of them have already avowed the part they took in the measure, and expressed their resentment of the indignity of your imputation. What I have advanced on this topic is a direct appeal to those, who are acquainted with the transaction, and the only persons acquainted with it, and that you persist in your assertions, as if you expected, that the most pertinacious impudence would cover the deformities of the basest malignity, and most profligate mendacity.

"Multa malus simulat, furiam mente laboras,

"Improbis, & stultis nullo moderamine vincis."

"Virtutis"

"The knave and fool together join'd,

"No rules restrain, no tie can bind,

"Perpetual slave to fraudulent art,

"Whilst rage, and malice swell your heart."

My appeal, he alleges, is with the view of "engaging the governor, and council in my quarrel." A man is charged with being the sole author of a measure published as the act of several persons, and these only are acquainted with the origin, progress, and conclusion of it. The accuser was not only no party in the measure; but was entirely excluded from all knowledge of the manner, in which it was conducted. The accused appeals to those who were concerned in, and perfectly acquainted with, the whole transaction, and this appeal is attributed to the motive of engaging them in his quarrel. Again—the members of the council, the accuser suggests, "though sensible men, may have been outwitted," but they must still continue under the delusion, if they were "outwitted," or they would not, as men of honour, avow their opinion of the legality, and expediency of the measure, and that they were equally concerned in it with the accused. If they have discovered, that they were "outwitted," their conduct would be very different; they would naturally express their indignation against the man, who had deceived them—to what an astonishing pitch of impudence has this Citizen arrived! The absurd application of the maxim, "the king can do no wrong," to the governor, because he is "youthful and unsuspecting," accountable for his conduct, and punishable by statute for acts of oppression, has been already shewn; but the Citizen, in his last gallimaufry, has introduced another maxim, as he calls it, that "the king's speech is the minister's," and applied this to the governor ("because youthful and unsuspecting.") There is no end to such babbling—

"break one cobweb through,

"He spins the slight, self-pleasing thread anew:

"Destroy his lie, or sophistry, in vain,

"The creature's at his dirty work again."

What answer should I give, if hereafter he should think proper to assert, that the governor ought to be chosen by the council out of their own body, because the pope is chosen by the cardinals. He has given some smart proofs of a versatile genius. Though a papist by profession, he can be an advocate for the established church of England, when he speaks of the revolution. Such is his address, that he may hold one candle to St. Michael, and another to the dragon.

"You knew me of old."—Indeed, Pray, when did our acquaintance begin, how has it been improved into knowledge? Perhaps your knowledge has been gathered in your slights, when you was gifted with the powers of Ariel. Hard is it upon a poor mortal to encounter such supernatural intelligences. "I have always fathered my mischievous tricks upon others"—roundly asserted; but what proof have you? An unhappy wretch you are, haunted by envy, and malice.

"Invidia Siculi non invenerunt tyranni"

"Majus tormentum"

"Sicilia's tyrants could not ever find"

"A greater torment, than an envious mind."

"I want to engage you in a quarrel with the governor, and council." I have, indeed, been led by your false, and impudent accusations to take notice of the public insult you had offered them; but the know-