

fares, I would fain know of any reasonable and unprejudiced person, whether he does not think, there were great grounds for the seasonable exercise of that authority which the law and constitution have placed in the hands of the executive power here, to check in their bud those evils of office, which otherwise, it might well be expected, would soon have blossomed, ripened, and yielded from the pockets of the people, an exuberant harvest of fees to the officers? And what other mode of checking those evils (I would gladly be informed) hath the constitution of our mother country, or that of our province provided, save only that by proclamation? "Silence," as we observed before, we have cause to suspect, would be unproductive of any, but bad effects: "Letters missive," to restrain the exaction of officers, are rarely practised in Britain, or with us: And a "whisper," could we pen one, like that of Mr. Bayes for his "state physicians," would seem a dissuitable method of communication here, and properly useable only by his own "ministers," or their "royal masters," the "two kings of Brentford." Proclamation, then, I conclude to be the regular step the governing power, with us, could pursue, of declaring or notifying his assent or dissent, with relation to any matter or thing he would publicly command or forbid.

Thus far (it would seem) we stand pretty well justified, with respect to the manner of the prohibition: with respect to the matter of it, we are still clearer. If "oppression and extortion" are offences punishable by the laws of the land, and that they are, the law-books speak aloud (H), and too frequent experience doth fully evince: then, I have no doubt, in declaring my opinion, "That a proclamation prohibiting these offences, being grounded," as the Lord Coke saith (I), "on the laws of the land;" or as Judge Blackstone expresseth it (K), "being made to enforce a prior subsisting law" among us, against these offences, is constitutional, legal, beneficial to the people, and obligatory, to all intents and purposes, upon such as are the objects of it; and consequently, that the "governors proclamation," being issued for these purposes, and grounded on the actual existing laws of the land, is, with respect to the officers, who are declaredly the objects; and only objects of it, constitutional, legal, beneficial to the people, and obligatory on the officers, to all intents and purposes whatever." Which was the point I was to endeavour to prove, or at least to maintain, as well as I was able, in my opinion.

But, here I am apprized, it will be flung out at me, (as I have frequently experienced in discourses on this subject) that my opinion is, and must be *construed*, being contradictory to the sense of the lower house of assembly declared on this point, in the October session 1771; when, it was resolved unanimously, That the proclamation, issued by the governor, with the advice of "his lordship's council of state, on the 26th day of November 1770, was illegal, arbitrary, unconstitutional, and oppressive (L)." What were the assigned reasons, that induced the house to enter up this resolve, I know not; being absent from it, through sickness, at the time the resolve was made: but if the reasons that led to it, were not more cogent than those I heard offered, in the course of the debate in support of the address to the governor on the proclamation; I frankly confess, had I been in the house, when the above resolve passed; it should have shared the fate of the address with me, and been stamped with my negative, though I had stood *single* in the opposition to it. Whether this resolve will, or will not, bear down my opinion, it is for others, not for me, to determine.

"But, in our circumstance and course of thought

(M) (if conjecture may be indulged) it will with some folks prove very "heavy." For men there are with us, and not inconsiderable in number too, who seeing, hearing, and understanding, by the powers and faculties of the representative, esteem every act, every resolve of the lower house of assembly, as sacred and unquestionable (N): never examining, they never acquire any knowledge; and taking every thing upon trust, faith becomes their bulwark: "These men (saith Mr. Locke) (O) like the common soldiers of an army, are attached to this or that party, to this or that opinion, to this or that side of the question, and shew their courage and warmth, as their commanders direct, without ever enquiring into, or so much as knowing the cause they contend for; it is enough for them to obey their leaders, to have their hands and tongues ready, for the support of the common cause, and thereby approve themselves to those, who can give them some little credit, countenance, and assurance in the community: thus they become professors of, and combatants for, opinions, they never were convinced of, nor proselytes to; no, nor ever had so much as floating in their heads." Such earthy minds as these, like mud walls, resist the strongest batteries; and though perhaps sometimes, the force

(H) See 1 inst. 368. b. 2. inst. 210. and Bacon's abr. vol. II. p. 453. and vol. III. p. 744. and the books and authorities there referred to by him. "Extortion is said to be more odious than robbery; robbery being apparent, and wearing the face of a crime; whereas extortion puts on the visor of virtue for expedition of justice, and is ever accompanied with that grievous sin of perjury." 1 inst. ibid. It is punishable by imprisonment, fine, forfeiture of office, &c. See the above books.

(I) 3 inst. 162.

(K) 1 vol. commentaries, p. 270.

(L) See notes and proceedings, October session, 1771, p. 20.

(M) Shakespeare's Hamlet.

(N) 'Tis by these men (as a friend of mine very justly observes in a late letter received from him relative to our election) "That I have been treated with a severity unequalled even in the land of Turkey! for there, they rarely condemn a man unheard, or upon an ex parte representation; and never refuse him a hearing by way of defence and justification, if requested by him, however they may have pre-determined to dispose of him."

(O) Essay on the human understanding.

"of a clear argument may make a little impression, yet they nevertheless stand firm, and keep out the enemy truth, that would captivate or disturb them." "A man might more justifiably throw up cross or pile for his opinions, than take them by such measures;" as if the immutable nature of right and wrong was to shape and vary itself, to the various faces and as variant opinions of mankind; or was dependant on the voice of a majority or minority in a house of assembly, uttering the bare syllables of yea or nay concerning it!

Other men, I confess, there are, of different casts and complexions from those above described; and who, being moulded of purer or more refined clay, observe a purer and different conduct in every action of their lives. Conscious of the frailty, and not strangers to the depravity of human nature, they refuse to repose an implicit confidence in the declarations or resolves of one individual, or of one thousand of them assembled together, (how unanimous (ever they be) on a questionable point of great constitutional importance; being convinced by daily experience, that the ablest men are liable at times to deception and error, and frequently to be agitated and swayed by passion or prejudice, or warped in their notions and judgments, by self interest, popularity, and other private springs of action, that are artfully concealed from ordinary sight. Such men as these, disdaining to pace in teams, and to submit the faculties of their souls to a state of mental bondage, freely cast about them, examine all things to the bottom, and "hold fast that, they esteem right;" endued with reason for the attainment of that desirable object; and not content lazily to sit down, with scraps and crumbs of begged or borrowed opinions, they form their own of the rectitude or obliquity of any particular measure, that hath been pursued, not on the hearsays or declarations of this or that set of men, respecting it, but on the nature and tendency of such measure, to promote or prevent the good and happiness of the people in the community: These men can readily, but not without reluctance, call to sad remembrance, the times, when a majority of great and wise men, in the most august assembly (perhaps) in the world, established, in opposition to a feeble minority, a stamp-act on America! when they passed the act of parliament, declaring the dependency (the reader will be pleased to supply from his memory the remaining part of its title) with all its train of consequences on us! when the like or same majority, suspended, by act of parliament, the legislative powers in New York! and, when a "majority" in the commons house, excluded, by their "resolve," Mr. Wilkes his seat there, though elected and returned, under a superior number of free suffrages, and admitted colonel Luttrell under an inferior to, and do continue him & all in, it, contrary to the representations of the freeholders of Middlesex! In all these instances, and many more that might be adduced, I would fain ask some persons among us—Who they esteem to have been right; the majority who proposed, and carried these measures; or the minority who opposed, and voted against them? And their answer shall, if they please, determine the fate of my poor opinion, whether it is, or is not to be crushed to pieces, by the weight of that resolve, that hangs louring over it. For my own part, although I clearly hold, that all due respect is to be paid to the resolves of either or both houses of our assembly, yet I hope, I shall give no offence, when I declare, that I never have been yet, and I trust I never shall be, able, to look upon them in the light of laws, (especially with respect to such persons, as are not members of either house) "how assertive soever they be in opinion, or vehement in expression;" nor yet; (what's more) that the framers of them are inspired or infallible men! And as I see no reasoning in them, or in the address to the governor grounded on some of them, respecting his proclamation; to induce an alteration of my opinion of it; so I acknowledge, no authoritative power in either; so I preclude me from declaring my opinion in the manner I have done: nay, I protest, had not some persons, from an overweening fondness of the resolves, (whether real, or affected, I cannot pretend to say) held them forth to the people, as the only genuine and authentic documents, whereby to form their judgments, in relation to the proclamation, I should have passed them by unnoticed, not doubting, but the intelligent reader, without being reminded of it, would naturally have assigned its due weight, to the declared sense of each of the three component branches of our legislature, with respect to the nature and tendency of the above measure; and consequently, that two of them, (the governor and upper house) being fully satisfied of the constitutionality, or legality of the proclamation, he might think himself well justified, in adopting this sentiment, if weight and authority are to influence, and prevail (with him as with some others) in the scale of determination.

Thus, it seems, that my opinion, which, "prima facie," was much endangered, and like to be over-laid by the above resolve, is better supported and protected, than some have imagined; it hath two to one, (P) to give the plate on its side of the beam, a preponderancy in its favour; unless the following resolve, exceedingly extraordinary with the former, and which comes close at its heels, be construed to detract a part of its momentum: viz. "Resolved, That the advisers of the said proclamation, are enemies to the peace, welfare, and happiness of this province; and the laws and constitution thereof (Q)." "An heavy charge" (writes his excellency) (R) but happily a charge, "that marks the temerity and rage of the promoters of it; but is devoid of proof, to fix the imputed guilt of the accused, to whom I pay no great compliment, when I say, that they are animated by as tender regard for the peace, happiness and constitution of this

(P) The weight "of the governor and upper house," against "the lower house."

(Q) See notes and proceedings, O.S. session, 1771, p. 20. "Who the 'advisers' are, may be learnt by recurring to the former resolve."

(R) See notes and proceedings, 1771, p. 83.

"province, as the framers of the address and resolves."

I have ever apprehended, that prudence and moderation, were, or at least ought to be, the distinguishing characteristics of men invested with legislative powers; and that mankind generally find their account better "in mediums, than in extremes (S)." I have read, (T) that when Sol gave leave to Phaeton to drive his glittering chariot; he counselled him to this effect: "Ascend not too high, lest you inflame the earth; go not too much to the right, nor too much to the left; but keep the middle way, for that is safest!"

"O, but man! proud man,

"Drest in a little brief authority,

"(Most ignorant of what he's most assur'd)

"Like an angry ape,

"Plays such fantastical tricks before high heav'n

"As make the angels weep (U)."

Forbearing then, here, any further observations of the kind, (though there is great room for them) we will again resume our considerations respecting the proclamation.

I have "endeavour'd" to shew, and I trust not altogether unsuccessfully, That upon the lapse of the old inspection law, in 1770; when from an unhappy disagreement between the two houses of our assembly, no new regulation of fees could be fallen on, the peculiar circumstance of our province, at such a conjuncture, required the aid, and seasonable interposition of the executive power, to guard and protect the people thereof, against the exorbitant demands and exactions of fees by the officers of government, in its various departments; that the officers were then (and without the proclamation must have continued) under no kind of restriction, with respect to the price, they might set on their services; and that therefore, the people, in order to have got their business done by them, must have paid them, whatever they thought proper to ask for it; or have consented to let their business go undone; that the governor at this crisis, was LEGALLY and constitutionally invested under the charter of our province, confirmed by act of assembly, with all necessary PREROGATIVE, to restrain the exorbitancy of the officers demands; and that the DUTY of his STATION then required the EXERCISE of it; that it could be EXERCISED consistently with the laws of Great Britain, adopted by our province, and agreeably with our charter, in no manner, so regularly, as by ORDINANCE or PROCLAMATION; and that such ordinance or proclamation, grounded on the actual subsisting laws of the land, against the offences of EXTORTION and OPPRESSION, and issued to PREVENT THE COMMISSION OF THEM, BY THE OFFICERS, WAS CONSTITUTIONALLY LEGAL, BENEFICIAL TO THE PEOPLE, IN WHOLE BEHALF; it was made; and OBLIGATORY on the OFFICERS, who were the SOLE OBJECTS of it, to all intents and purposes whatsoever: This, I say, I trust, I have, notwithstanding "alleged unsuccessfulness," attempted to shew, in the course of my opinion, from the best CONSTITUTIONAL WRITERS on the subject, and the fountains of PRINCIPLES and AUTHORITIES of law, laid down in our books, illustrated by a SPECIAL CASE or two, which evidently hinge on those very principles.

How the people came to be alarmed, and such clamour raised against a measure, most manifestly calculated to promote their interests; if they inclined to take advantage of it, as most of them, amidst their complaints, have done; and without which, they neither are, actually or intentionally the objects of it, nor are, nor can be, immediately, or remotely affected by it; might easily be disclosed here, did it fall within the province of my opinion: but it is clearly without it: I shall therefore content myself with briefly referring the inquisitive reader to the votes and proceedings of the sessions of assembly in 1770; where he may probably acquire an imperfect idea, of what, I have this time, a full, clear, and adequate conception.

I said just above, that the people were not, but that the officers were, declaredly, the intentional and actual objects of the proclamation: I here submit this point (much depends on it) to the determination of the publick, on their re-perusal and re-consideration of the plain, unambiguous words, in which the proclamation conceived, and the equally plain, and unambiguous sense, meaning, and import of those words.

Where words are FULL and CLEAR (as I conceive those of the PROCLAMATION are,) every species of construction, every mode of interpretation, are to be excluded with respect to them: words being the common signs, that mankind make use of, to declare their thoughts and intentions one to another; when words of a man express his meaning, according to usual import of them, plainly, distinctly, and perfectly; there cannot, consistently with common sense, any grounds for construction, or interpretation; and he who agrees, a maxim, frequently to be met with in the law books; viz. "Quoties in verbis, nulla est ambiguitas, ibi nulla expositio, contra verba expressa, fienda est;" for, the law, saith the Lord Coke, "will not make an exposition against the express words, and intention of the party." And it would seem, strange and extraordinary, if it should! equal in import, and extraordinary, doth appear to me in the following paragraph, in "the humble address of the house of delegates to the governor;" (the address which I voted, and for my vote, lost a seat, against which I voted, and for my vote, lost a seat, was very willing to resign;) "your excellency's

(S) Montesquieu's Spirit of laws, book 11. c. 2.

(T) Vid. Ovid. metam. lib. 2.

Nec preme, nec summum molire per aethera curvum
Altius egressus, cael-stia testâ cremabis;
Inferus turas, medio tuiusq; inclinat.
Ne te deterior totum declinet ad anguem,
Neve sinister pressam rota ducat ad aram;
Inter utrumque tene.

(U) Shakespeare.

(V) 1 inst. 147. a.