

MARYLAND GAZETTE

THURSDAY, SEPTEMBER 9, 1773.

POLIS RACES.

On the 28th of Sept. will be run for, KEY CLUB PURSE of ONE HUNDRED GUINEAS, free only for Horses &c. the Members of the Club.

On WEDNESDAY the 29th. PURSE of FIFTY POUNDS, Give Aged Horses 14 Hands high to carry wing 7lb. for every Year under Age; every Inch under 14 Hands; but for above 14 Hands, to carry 7lb. extra-ordinary 3 Miles each.

On THURSDAY the 30th. PURSE of FIFTY POUNDS, free Three Years old; Four Years to carry 12 Years to carry 7 Stone, allowing 2. Heats 2 Miles each.

FRIDAY the 1st of October. PURSE of FIFTY POUNDS, Horses, Mare, or Gelding, carrying 9 Stone 4 Miles each.

be a Sweep-stakes on Monday the 7th of September, between Fitzhugh, Esquire's gray Filly, by Fear-

Ogle, Esquire's gray Filly, by Othello, and Esquire's gray Filly, by Traveller.

ing Horses each day is excluded starting the other Plates.

rs of Three Pounds or upwards, may for each, or all of the Three last Days on-Subscribers to pay Two Guineas En- Day.

ses intended to run for the Two last must be entered with the Clerk of the Saturday the 23th of Sept. any Time before Noon; and the Horses for the give rate, must be entered and measured before of Three and Six in the Afternoon day, or pay, should they start for any tes, double Entrance at the Post, if the a Non-Subscriber, Three Pounds.

ers to the Plates, and the Gentlemen Horses to start for the Jockey Club Purse, to enter them the same Day, that Lists are out and published. Certificates of must be then produced.

ses are to start each Day, precisely at o'clock. The winning Horse each Day, to linea to the Clerk of the Course for and Scales. Judges to be appointed by ds.

ies as usual, on Tuesday and Friday.

LLOYD DULANY, Esqrs. Stewards. RICHARD SPRIGG, Esqrs.

Encouragement of the Market, and the Entertainment of the Company at Annapolis Races, the JOCKEY CLUB have directed Secretary to publish the following Pre-

N POUNDS CURRENCY largest and fattest Beef that shall be Market, and sold at or under Six-pence The Four Quarters not to weigh less Pounds.

ONE GUINEA largest and fattest Weather, above Four

REE POUNDS CURRENCY person who brings to Annapolis during the week the greatest Quantity of the largest and most saleable Fish, and retails the same at the lowest Price. Proof of which must be made to the Secretary of the Club at the End of the Week.

proposing to become Candidates for the Office of Secretary, are to apply to the Secretary of the Club.

WILLIAM EDDIS, Secretary.

away from the subscriber, living in Charles County, a servant lad, called Hooper-Bennett, 12 years of age, slender make, about 5 feet 3 inches high, light coloured hair, which he generally wears in a sloping manner, pale fallow complexion, appears to have had the fever and ague, speaks in a hoarse and calls himself a barber and hair-dresser: when he went away, a brown short skirted coat, lined with white, and olive coloured velvet breeches, though it is supposed he may have now changed his dress: he was from, about five weeks ago, in Calvert county, and I do not know either in that or the county of Prince Georges. Whoever brings said servant to the subscriber, shall have a reward of forty shillings. RICHARD LEE.

Person wanting Searches made in the Records for the Western Shire of this Province apply to

J. CLAPHAM.

DEEN and SON.

To JOHN HAMMOND, Esquire.

S I R,

YOUR communicating in print the grounds and reasons of the opinion, you have entertained in favour of the proclamation, has laid you under a necessity of making this address to you. If you are wrong, and we think you are, it would be a happiness beyond our expectation to work such conviction upon your mind, as to induce you publicly to retract your opinion; yet we flatter ourselves with the hope, that an attempt to prevent others being misled by the indigested learning, which hath bewildered you, will not prove altogether unsuccessful. Freedom in enquiry and opinion we hold with you a natural right; and therefore the terms—"cavilling and quibbling sons"—"selfish and designing men"—"the sowers of sedition and discord"—"state-lawyers who pushed forward this publick resolve for the promotion of their own private gains," applied to those, who differed from you in sentiment, are intemperate. Those men, whom you thus insult in outrageous terms, have been as strait forward and uniform in their conduct, as little deserve your groundless imputations, and have sacrificed as much of their private gains, as yourself. But, Sir, in order that the true question may fairly be kept in view, and the reasoning on either side may be fully comprehended and compared, we not only intend to waive any unnecessary notice of the very exceptionable language, you have frequently made use of, but propose to lay aside, as useless, in the present discussion, the graces and ornamental parts of your piece,—your partial state of the treatment you received on the day of the Anne-Arundel election,—your confutation of what, you esteem a frivolous charge against yourself in the letter of it, though the substance seems not to be denied by you,—as well as your scraps of plays and ends of verses.—A parade of learning may make fools gape and stare, but cannot convince the understanding of any sensible man; equally foreign too is it to the question, whether you, who appear an advocate in favour of the proclamation, do so on the fullest conviction of the propriety of it, or whether those, who have opposed it, have done so from interested or selfish motives.—The legality of the proclamation must be tried by a different standard, the constitution and laws of our country.

Neither you, or any other advocate for the proclamation, have explicitly and fully stated the extent of it, argument may be endless unless its extent is first settled.—You say that the governor's proclamation 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."—Again—the proclamation "was constitutional, legal, beneficial to the people in whose behalf it was made, and obligatory on the officers who were the objects of it, to all intents and purposes whatever."—Again—"how the people came to be alarmed, and such clamour raised against a measure most manifestly calculated to promote their interests if they were inclined to take advantage of it,—as most of them amidst their complainings 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."—Again—"I have said just above, that the people were not declaredly the intentional and actual objects of the proclamation; I here submit this point (as much depends upon it) to the determination of the publick."—Again—"If the proclamation hath afforded these advantages to the people, no less beneficial hath it proved to them in removing all grounds of litigation and contest between them and the officers, which must have inevitably ensued from the different rates each would be inclined to annex to the service performed by the latter."—Again—"Is it for the good of the people that endless litigation should be prevented having any foothold among them? if it is, and I guess it will not be denied but by a few, then it follows that the proclamation, &c. by establishing the most easy and equitable rates of fees that ever prevailed in our province, stopped the career of suits among us;" "fees being incidental to, or as some chuse to call them, the perquisites of office, are constitutionally and properly rateable by the same or like authority that established the office and appointed the officer;" "fees are not taxes, or taxes fees, &c." "nay, these considerations have, I trust, shewn somewhat more, in whom the constitutional right and power of regulating the fees of office doth reside, and by whom it is to be exercised on fit and proper occasions;" "the proclamation which regulates the fees of officers with us, hath not by its context or import the least tendency to lay a tax upon the people, it leaves them just as they were before it issued, as to any compulsory charge or payment to be enforced from them;"—from these extracts, already too long, and others, which might be made from your piece, your idea of the proclamation seems to be in no wise settled or precise.

If your considerations have shewn, "in whom the constitutional right and power of regulating the fees of office doth reside, and by whom it is to be exercised on proper occasions; if your considerations have shewn, that fees are "constitutionally and properly rateable by the same or like authority that established the office and appointed the officer;" if the proprietary established the office and appointed the officer; if the proclamation hath proved beneficial to the people, "in removing all grounds of litigation and contest between them and the people, by establishing the most easy and equitable rates of fees that ever prevailed in our province;" if the proclamation regulates the fees of officers, how incongruous are these propositions to your assertions, that "the officers were the sole objects of the proclamation to all intents and purposes whatever;" "that the people neither are actually or intentionally the objects of it, nor are nor can be immediately or mediately affected by it;" "that the proclamation leaves the people just as they were before it issued as to any compulsory charge or payment to be enforced from them." It is true, the officers are the declared objects of the proclamation, but no sound conclusion can be drawn from thence, that the people are not both actually and intentionally the objects of it, or that they are not nor can be affected by it. If fees are rated, regulated and established by legal and constitutional authority, such rating regulation or establishment creates a legal obligation on the people to pay according to those rates, and thus and only thus can all grounds of litigation and contest between them and the officers be removed; it is absurd in terms, and can only flow from a confusion of ideas, to say a right can be given to an officer to have, demand, receive or take, and no obligation on the people to render, pay or satisfy. The extent of the proclamation, however, yet remains unsettled. You find fault with the motive and design attributed to it, and contend the terms made use of in that instrument are so plain and explicit in themselves, as to leave no room for construction; if every proclamation made for the publick good is a legal and constitutional proclamation, founded on undoubted prerogative; and if, when the proclamation itself suggests the publick good, as the motive, end and design of it, the suggestion is to be complaisantly taken for truth, perhaps no proclamation, which ever was, or would be issued, would want undoubted prerogative for its foundation: No apology is necessary for the strictest examination of the rightfulness of powers exercised by government; our constitution is jealous and distrustful; hence the various and mutual checks and controuls wisely contrived by our constitution, and hence it is, that we have representatives at all. Fearing no doubt, that your readers should not otherwise be possessed of the true sense of the proclamation, you have followed the beaten tract of inserting it, at large, in your piece, though the regulation of fees in the land-office, which is referred to in it, and is, as we apprehend, a part of the same governmental act, hath been omitted.—The defect is supplied by an insertion of the following copy—"Frederick absolute lord and proprietary of the province of Maryland and Avalon, lord baron of Baltimore, &c. For the ascertaining what fees and perquisites may and shall be taken and received "by our judges and register of our land-office, for their own use and benefit, we do think fit, and accordingly declare it to be our will and pleasure, "that our said judges and register, shall have, receive and take the following fees and perquisites. "hereunder writtten, to their own use and benefit. "Witness our brother Robert Eden, Esq; governor "of our said province of Maryland, and chancellor "and keeper of the great seal thereof. Fees and perquisites allowed, &c. N. B. The above fees, if paid "for at the time of performing the service, may be "discharged in money, at the rate of twelve shillings "and sixpence currency for every 100lb. of tobacco; "and if paid in inspected tobacco, 10 per cent. to be "discounted for conveniency."

The express affirmative terms of this declaration, or regulation, need no comment. The lower house in their address, November session 1771, contend the land-office is a publick office, amongst other reasons they urge—"the land-office, Sir, is the publick repository of the first and most necessary evidence of every man's title to his real estate in this province; the whole records have been made up, so far as we can trace, at the expence of the people; these records have been considered as publick records, kept under securities by acts of assembly, and office copies are constantly received and admitted as evidence "by the courts of justice." To which the governor answered—"so far as it (the land-office) is the repository of the muniments of his (the proprietary's) tenants estates, it is a publick office; and all the people of Maryland are entitled to have access to it, "as well as to the other offices, &c." Thus by the concession of the governor, the land-office, as to the records kept there, stands in the same predicament of other publick offices; for the searches and copies of which records, by his regulation or declaration, the judges and register shall have, receive, and take the fees and perquisites therein mentioned. However you

may effect to despise the address of the late lower house, you nor any advocate for the proclamation have attempted, by fair argument and deduction, to controvert the proposition, that the necessary construction of the proclamation, with regard to the other officers, is an affirmative allowance to receive the quantum regulated by the late inspection law; in support of the proposition the lower house argue—"when your excellency authorized the registers of the land-office to receive the respective quantum enumerated in your instruction to them, and which were allowed and limited by the late regulation, "without an express prohibition against receiving "more; we fairly presume, that you meant an allowance of so much, and an implied prohibition to "take more; for we cannot suppose you intended "those officers should be justified in receiving so much, "and as much more as they could extort. And when "your excellency by your proclamation prohibited "the officers from taking other or greater fees than "limited and allowed by the late regulation, you as "certainly must have meant a prohibition against "taking more, and an implied allowance of so much; "besides, so much by your proclamation is not extor- "tion, and therefore on this supposition may be de- "manded and taken &c. On recurring to the late in- "spection law which limited the officers' fees; we find "that the words of that act are, that no officer or of- "ficers hereafter mentioned in this present act, their "ministers, servants or deputies, by reason or colour "of his or their office or offices, shall have, receive or "take, of any person or persons, directly or indirect- "ly, any other or greater fees, which shall become due "after the last day of November, in the year 1763, "than by this act are hereafter limited and allowed "to the several officers hereafter mentioned; which "expressions every body knows have always been con- "strued an implied affirmative allowance of such fees; "and when your excellency has been pleased to issue a "proclamation in the very same words, we cannot but "conclude, you must have had the same idea affixed "to them, as was universally affixed to those words in "the act from whence they were copied." To which may be added, that the proclamation of 1733, opposed by the representatives of the people as illegal, and attempted to be justified by government as a legal regulation of fees, was conceived in the same terms; and an act of parliament allowing poundage fees to sheriffs in nearly the same terms, has met with the like construction in the king's-bench (Mo. Ca. 1166.) But it seems your scrupulous regard to gentility will not suffer you to make or allow such construction; for the law, saith Lord Coke, will not make an exposition against the express words and intention of the party; yet the governor himself writes, "for the very purpose of regu- "lating the conduct of the officers in the article of "their fees, to point out to them what they might, "and beyond which they should not demand, I issued "my (shadowed as you call it) proclamation, &c." Is it conceivable, Sir, that the governor and council should alone be ignorant of the ideas affixed to the terms made use of in the expired acts, or the former proclamation, that they should all be ignorant of the construction on the statute above mentioned, or that any of them should be so ignorant of the common and ordinary import of terms, as that when no other or greater are allowed, so much is understood to be allowed? Does not the practice under the proclamation justify the construction? or do you know of any officer who does not charge fully up to the rates? again, what does the proclamation forbid as extortion? the exaction only of fees beyond the regulation. Does not the right to demand extend as far as the limits of extortion? can extortion be ascertained without ascertaining the exact compensation? "a right to determine the fees charged were excessive, writes his excellency, implies the right to settle the exact compensation due for the services performed, because without the standard, what fees are adequate, what are more or less than the just proportion, cannot be ascertained." Where then is there any breach of good manners; in advancing or maintaining the proposition, that the necessary construction of the proclamation, with regard to the other officers, is an affirmative allowance to receive the quantum regulated by the late inspection law? If the extent of the proclamation is thus satisfactorily fixed, as we think it must be, we apprehend that proclamation "unconstitutional in the matter and "shadowed (let the term be carpied at as much as it "may) in the manner with the assigned reason to pre- "vent extortion by the officers, in imitation of the "practice of arbitrary kings, who in their proclama- "tions, which have been declared illegal generally "covered their designs with the specious pretence of "publick good. A short review of the assembly proceedings in 1770. may not be useless in the investigation of this subject. The inspection law, which contained a regulation of the staple, clergy's dues, and officers and lawyers fees, was in the year 1769 continued only till the 1st October, 1770, with design, when more time could be conveniently spared, to review the tables of fees, and examine the practice of charging under them; the assembly met the 25th September, 1770; the lower