

Individuals should take care, especially public men, when they make assertions, to confine themselves strictly to the truth. This precaution was not scrupulously attended to by the delegates when they asserted, that "the senate admit they are greatly apprehensive of the consequence, should our paper currency continue to depreciate, and come to nothing." This part of the senate's message, as several others, has been misrepresented. The message alluded to is an answer to an assertion in former message from the delegates, wherein they say, the enemy's hopes of success are founded on a failure of our public credit, subjoining, *in their own opinion*, that our paper currency is the only means we have of carrying on the war. To this the senate reply, "The enemy's hopes, should a public bankruptcy happen, would probably be disappointed, as they have been in many other instances; the word *even* has here a secular force, and implies directly the contrary of what is charged upon the senate, viz. an apprehension of some bad consequences from that sort, but not so bad as to disable us from carrying on the war; in support of this opinion they allege, that money, especially paper money, is not the means of war, but good soldiers and good officers, the necessities of life, numbers, and above all, the virtue of the people; they have the authority of Machiavel (see the 10th chap. of his second book of discourses on Livy) for this opinion, and the experience of past ages. The Greeks repelled the invasions of the Persians, an valiant and powerful people; the Swiss, though poor, maintained their liberties against the house of Austria, through an almost uninterrupted struggle and contest, for several centuries; they fled, the latter particularly, mostly on the defence, and in defensive wars, if judiciously managed, money, at least so much of it, is not so necessary as in offensive wars, in which distant, and course expensive expeditions are commonly undertaken. Admit our currency should come to nothing, does it follow we should be destitute of all resources? Would the virtue too of our people sink with that currency? Have we no gold and silver among us? Though the quantity would be small, this very scarcity will make it more valuable, and consequently it will command the more of every saleable article. Taxation, in kind, would in a great degree supply the deficiency of solid coin; would not France and Spain assist us with a subsidy? It is not the interest of those powers to suffer us to be reduced under the British yoke, and therefore we may reasonably presume, they would assist us with money, and with their fleets and armies too, if necessary. We have already derived considerable aid from France, and might expect greater, proportion to our difficulties and distress. Yet ought not to rely altogether on foreign aid, we must make the greatest exertions for our own relief, for these very exertions will be a strong additional inducement to our ally to help us. We have resources, without resorting to unjust, the breach of our constitution, and of common law, if we will call them forth: some of them have been mentioned; the sale of the back lands, next to taxes punctually and quickly levied, the greatest of all our internal resources, for procuring money, remains to be considered. But the sale of these lands, say the delegates, cannot be made, upon the principles of the senate, because if their principles are just, they ought not to be confiscated. I have not met with any principle, or principles, laid down by the senate, which would prevent the confiscation, more properly the conquest, and sale of these lands, particularly, if they belong, as the delegates assert, to the king of Great-Britain, as trustee for the British nation. The objection of the senate to the confiscation of British property, seems to extend no farther than to private property; they do not positively assert, that even private property may not, by the extreme rigour of the law of nations, be confiscated. "As far as we have examined, say they, into the subject, we doubt, whether by a fair construction of that law, the declaration of independence can have such a retrospective operation, as to vest in this state all British property, acquired by individuals, antecedently to it." Here, they seem to intimate, that some kind even of private British property may be confiscated; they express their doubts whether all British property, within this state, is vested in it, by the declaration of independence, and this doubt is confined only to property acquired by individuals, that is, to private property: the plain and obvious inference therefore, to be drawn from the sentence, is, that public British property may be confiscated, in the opinion of the senate.

If the principles herein before laid down be just, and the reasoning upon them conclusive, no doubt can remain, but that the back lands, belonging to, or which did belong to the British nation, as the representative of the British nation,

may be confiscated by the law of nations; nor is there any thing alleged, by the senate, contradicting this conclusion. Upon the same principles, if they belong to the native Indians, and they, being really aliens, have unjustly warred against us, and those lands are not possessed by individuals among them, but held collectively by the tribes, they may also be confiscated; if an exclusive property, in some portions of the territories in question, has taken place among them, the individuals of those tribes, who by committing hostilities upon us, have incurred the guilt of an unjust war, and made themselves criminal members of their society, they too, as aliens, and criminal members, may forfeit the lands held by them, as private property. The United States, by the right of conquest, upon the principles of the common law, and the law of nations, would acquire a just title to those lands, supposing them to belong either to the king of Great-Britain, or to the Indians collectively, or individually. But should the congress adopt the reasoning of the senate, the delegates shrewdly remark, it will not be willing to confiscate the back lands, because a restitution of them to the British crown, or an equivalent, may be made a preliminary of the peace: for if the restitution of the private property of refugees, or British subjects, or the value thereof, should be made a preliminary article, the restitution, surely, of public property, in which the whole British nation is interested, will be made one. This argument, if it deserves the name, has been already answered: a restitution of this public property cannot be demanded, as has been proved, by any right, arising out of the law of nations; if a restoration of the conquered country should be demanded upon any such principle, the demand would not be complied with, because the safety of these States, and the interests of both France and Spain, oppose the restitution, and therefore the full and entire title, or right, to this public property, will be finally passed away from the British king, by the treaty of peace, unto these United States. A restitution of private property, or the full value of it, if the owners should not chuse to reside in these States, or the laws of any of them should exclude the residence of particular obnoxious persons, is not liable to the same difficulties and objections, as has been already observed.

It is difficult to comprise within the limits of a newspaper all that ought to be said on this subject; and although I have already exceeded those limits, I must not omit one argument more against the measure. The delegates contend, that all British subjects became aliens, as to us, by the declaration of independence: on this principle, they originated the bill for seizing and confiscating British property, and on this they principally rest its defence. Now, whether all British subjects became aliens, or not, in this state, by that declaration, is, as I conceive, a point of law, triable in our courts of law, and with the decision of which, the legislature has nothing to do, unless going out of its province, it should assume a judicial power; but in so doing, it would run counter to the 6th article of our declaration of rights, which provides, "that the legislative, executive, and judicial powers of government, ought to be for ever separate and distinct from each other."

"In this distinct and separate existence of the judicial power (judge Blackstone remarks) consists one main prerogative of the public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property, of the subject, would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by fundamental principles of law; which, though legislators may depart from, yet judges are bound to observe."

Whether there is force in the foregoing observations and reasoning, the public, to whom the appeal is made, must determine; if it should determine in favour of the senate, it must also determine, that the fears and reasons of that branch of our legislature are not groundless. And here I would wish to conclude the investigation of a subject in which the people of this state are deeply interested, but I must trespass on their patience a little longer, while I examine the necessity of seizing and confiscating what is called British property, which seems to be relied on by the delegates, as a principal argument in support of the measure.

Jan. 29, 1780. A SENATOR.

For the MARYLAND GAZETTE.

THE publication in your last week's paper, under the signature of a senator, has given me not only pleasure, but information to me, and many of my neighbours. We have heard of the difference, between the senate and the house of

delegates, about the justice and the policy of confiscating British property. I have seen the messages, which passed between our two houses, on that subject, and the resolves entered into by the house of delegates, on the senate's negative to their bill. Any diversity of opinion between the two branches of the legislature, which may prevent or retard the public business, create animosity and rancour between the members, or injure, in any degree, our common cause, must give pain to every real friend to this state. We are still involved in a war, on the success of which our liberties, our property and our happiness depend. Every cause of disunion therefore ought most carefully to be avoided, and much have they to answer for, who are the authors of it. I understand, both houses have appealed to us their constituents, and the house of delegates have earnestly requested our instructions, as to the propriety of the measure. I cannot but remark, that it appears to me that the people at large are very incompetent judges of the subject. Very few of us can be supposed to be acquainted with the laws or practice of nations. The one branch alleges, "the confiscation of British property (debts excepted) is justified by the immutable principles of justice, and the law of nature and nations, and founded in policy and necessity." The other denies "the justice, the policy, or the necessity of the measure, and says it is contrary to the laws and practice of the civilized nations of Europe." Both sides have offered some reasons, and seem equally positive and decide in their opinions. I wish the house of delegates had not, by their resolves, so severely censured the senate, and pointed their anger at a few members of that body. They seem to me to wish to draw the public resentment on five gentlemen, because they differ from them in opinion, on a political question. For an error in judgment (if it was one) they declare, "all consequences, which may happen, from not complying with the requisition of congress, ought to be imputed to those members of the senate, who gave their negative to the bill;" and in their message they insinuate, "that their conduct proceeded from a partiality or affection to the old government, or a desire to secure the estate of the late proprietary from confiscation." It ought to be remembered, that the senate is elected by the people. That body was created by our constitution, to be a check and controul to the house of delegates, to correct their errors, and to prevent those popular passions, prejudices, and predilections, to which every numerous body are liable. Their duration affords stability, and the mode of their election secures a choice of the most proper men for their high and important station in our government. The present members are gentlemen of family, fortune, knowledge, experience, and abilities. I confess the senate is my favourite branch, and I am displeased at any thing which may tend to lessen their weight and dignity, or to injure their reputation and credit with the people. They are really the first men in our state. They are all equally engaged with us in the war; their lives and fortunes depend on its success. They cannot have a distinct and separate interest from the people. They are connected with us by the ties of blood, marriage, and friendship. They are as deeply interested in the welfare and happiness of this country, and have as much at stake, as any other set of men in the state, and bear with us their proportion of the burthens of the war. I do not make these observations to induce my countrymen to place an implicit opinion or confidence in that branch of the legislature, or to prevent the strictest examination into, and discussion of their public conduct, but to guard the people against improper and ill-grounded jealousies and suspicions. I should not have said thus much, if, some time past, aspersions had not been cast on some of the body, and even doubts entertained of their whiggism and attachment to our independency; and from a fear that the late resolves of the delegates, and the insinuations in their message, would give countenance to the suspicion. If there are any in the senate unworthy of the public confidence, or whose political integrity may be justly suspected, I wish they were known; but till they are pointed out, I will believe them all firm whigs, and zealously attached to our liberties and independency, and as such not only give them my confidence but support.

I am one of those who do not see the justice of seizing British property. I conceive the safe to be entirely new; that the laws or rules, or practice observed by independent nations when at war, cannot apply to revolutions like the present, and that our conduct ought to be governed only by such principles as appear to us founded in justice and equity. I apprehend the intended confiscation will effect and take away the property (which may be within this state) of two classes