

MARYLAND GAZETTE.

THURSDAY, OCTOBER 28, 1784.

TO THE PRINTERS.

Be pleased to give the enclosed a place in your next paper.

A CUSTOMER.

MOST people agree, that the convention, at the formation of the government, acted with great wisdom, in creating two branches of the legislature, that each branch might be a check on the passions and prejudices that too frequently prevail in popular assemblies; but the number of the senate being small, their weight can only be supported by superior dignity of character, abilities and attachment to the constitution; and as the senate was to be chosen but once in five years, by men under the most solemn obligations to elect "men of the most wisdom, experience, and virtue," it was no doubt concluded, that these superior qualifications, added to the length of time during which they could not be removed, would amply supply the want of numbers; these qualifications I believe were strictly attended to by the electors of the senate at the two past elections, and from that attention, the senate has hitherto been considered as doing honour to the institution; but whenever men are introduced into that body, who want wisdom, experience, virtue, or attachment to the constitution, from that moment the weight of the senate, as one of the branches of the legislature, begins to decline; nor is it enough that every member of the senate should have the qualifications above mentioned, but each member should be, like Caesar's wife, free even from suspicion; for if men of suspicious characters are introduced into that body, though there may be no just grounds for suspicion, the evil is almost as great as if the suspicions were founded on fact.

That a gentleman of suspicious character, and indeed a gentleman, who, in my opinion, is ineligible to any office of profit or trust in this state, was at the last session elected into the senate, I think, from the following state of facts, cannot be doubted.

But before I proceed, I do most solemnly acquit the senate, and every individual of it, of any design to introduce into their body any man whose political principles are inimical to the freedom and independence of America, or any man, who has not, from the beginning to the end of the contest, given unequivocal proofs of his attachment to the American cause; but what I think the senate have been to blame in, is, that they did not take sufficient pains to investigate the political character of the gentleman before he was elected.

The gentleman alluded to, is William Perry, Esq; who, towards the close of the last March, was elected into the senate in the room of general Cadwalader, who had refused to accept a seat in the senate.

That this gentleman's character as a whig was suspicious, and that he was, and is, ineligible to any office of profit or trust in this state, I shall attempt to prove.

By the act for the better security of the government, every free male person, above eighteen years old, was directed to take and subscribe the oath of fidelity to this state, on or before the first day of March seventeen hundred and seventy eight, and every such person neglecting to take the oath by the time aforesaid, was for ever thereafter to be burthened with a treble tax, and was prohibited from practising law, physic, or surgery, or the art of an apothecary, or to teach in public or private schools, or to hold or exercise any office of profit or trust within this state, or to vote at any election of electors or senators, or of delegates to the house of delegates.

Mr. Perry, it will not be denied (if it is, it can easily be proved) enjoyed, in the months of January and February seventeen hundred and seventy-eight, perfect health, attended during those months frequently at Talbot court-house, in the neighbourhood of which he did then and still does reside, when a magistrate was attending for the express purpose of administering the oath of fidelity to such persons as should apply, yet Mr. Perry, during that whole period, did not take the oath. Under these circumstances I ask, what must, on the second day of March, be the opinion of every whig in the county respecting Mr. Perry? Mr. Perry on that day could be considered in no other light than as a nonjuror, and of course liable to all the pains and penalties inflicted on nonjurors by the said act; the time for taking the oath of fidelity was elapsed, and might, for aught he knew, to him be passed for ever; was there, or was there not, at this time, reasonable grounds to suspect Mr. Perry's political principles? Surely there was, because he had refused to give that test of his political creed, which the laws of his country called on him, under very heavy penalties, to give. As I live at a considerable distance from Mr. Perry, I can say nothing of his private conduct; but this I am bold to say, that I believe there was not a real whig in the state, who was not under some disability at the time, that did not take the oath prescribed on or before the first day of March, and that every man in the state, who laboured under no disability, that refused to give this testimony of his attachment by that day, ought to be, and I believe was, by the real whigs, suspected of disaffection.

But it will be said, that although Mr. Perry did not take the oath on or before the first of March, yet he took the oath at March court. This observation leads me to consider my second objection, to wit, that Mr. Perry was not eligible to any office of profit or trust within this state at the time of his election into the senate.

To understand this, it will be necessary to state the conduct of the justices of Talbot county court from the beginning of March to the third day of June.

Talbot county courts are held annually in the first week in March, June and October; and by the act for the better security of the government, it was enacted as follows, "Provided nevertheless, and be it enacted, That if any person required by this act to take the oath or affirmation aforesaid, and whose name or mark shall not be subscribed as aforesaid, shall make it appear to the governor and council, within six weeks after the first day of March next, or to the county court of the county where such person resides, which shall first happen after the first day of March next, that such person is not offending against this act, and if of the age of eighteen years, at the time of such application to the governor and council, or county court, as aforesaid, shall take the said oath or affirmation, as the case may be, such person shall not be subject to the said treble tax and disabilities aforesaid."

The plain obvious intention of this proviso was, to give all those persons, who were absent out of the county on their necessary business, or were labouring under sickness or some disability during the time allowed for taking the oath, to come in at March court, and take the oath before the justices of the county court; or they might apply, within six weeks from the first of March, to the governor and council, and take the oath before them; in either of which cases they were not to be subjected to the treble tax and disabilities; but the proviso was never meant to take in all cases; for it expressly says, that before any person can take the oath before the governor and council, or county court, he must make it appear that he had not offended against the act. How was a man to offend against the act? Why, by not complying, if he was in a situation to do it, with the intentions of the act; surely then every man who had it fully in his power to comply with the act and did not, was an offender within the express letter and purview of the act.

Talbot county court was held on the first week in March, and continued sitting by frequent adjournments until the eighteenth of March, when the justices, in the plenitude of their power, assumed a right to adjourn the court, to be held on the twenty-fifth of March, at the Bay-side church, a place fifteen miles distant from Talbot court-house, the usual and constant place of holding the court. During the sitting of the court from the first Monday in March to the eighteenth, I have been informed, the court administered the oath of fidelity to all persons that applied, without distinction; so that Mr. Perry (had he chose it) might have taken the oath during that time, notwithstanding he had manifestly offended against the act; but he will continue to offend, and I lay it down as a principle, that from the moment that the court was adjourned on the eighteenth of March, it was no more a March court, and of course that every thing done by the justices as holding March court after that time was null and void, and Mr. Perry, not having taken the oath before the adjournment on the eighteenth of March, must be considered as subjected to the disabilities mentioned in the said act.

The adjourning courts to be held at the discretion of the justices in different and remote parts of the county, I conceive to be very injurious to the rights of the citizens, and if frequently exercised, must be severely felt; but before the right can be allowed, it will be necessary to shew some written law of the land, or usage immemorial, to justify it, and if neither of these can be shewn (and I am satisfied they cannot) it follows, that the claim set up by the justices being injurious to the rights of the citizens, and unsupported by any written law or immemorial usage, cannot be rightly founded; for if there is no written law to support the claim, and the universal usage and practice has been throughout this state to hold the county courts at some known place, it follows, that the justices are bound, by the immemorial usage and practice (it being, from that circumstance, the law of the land) to hold the courts at some certain place, and that place must be where the records of the county are kept, and to which all writs and other process are returnable.

That the legislature, a few years before the revolution, viewed this very matter in the light I contend for, I will prove by the following fact: At the time that Queen-Anne's county court was to be held, the small pox raged very much at Queen's town, the place of holding the county court, and in that neighbourhood; it happened, that the general assembly was sitting at the time, and the justices, conceiving that no power was vested in them to hold the court at any other place than Queen's-town, applied to the assembly for an act to enable the justices to hold the court at Chester-mill, a place seven or eight miles distant from Queen's-town. The assembly immediately passed an act for that purpose, and the court was held at Chester-mill. If the general assembly had conceived that such a power was already vested in the justices, they would not have spent the time of the house in a piece of business that was nugatory; and if the justices had such a right, I believe it will hardly be disputed, but that there were members in each house at that time that must have known it; but the fact was, that the general assembly were convinced that no such right existed in the justices, and being satisfied that the application was right and necessary, the law was enacted.

That the house of delegates, in October seventeen

hundred and seventy-eight, were of the same opinion almost unanimously, when this very adjournment to the Bay-side church was agitated, upon a controverted election, between Mr. Stevens, the sitting member, and Mr. Gibson the petitioner, fully appears from the votes and proceedings of that session. Mr. Stevens was returned as having the majority of votes; but it appeared, that if the names of those persons who had taken the oath after the eighteenth of March, and had voted at that election, were struck out, Mr. Gibson would have the majority of votes, and the house of delegates being of opinion that they were disqualified to vote at elections, their names were struck out, and Mr. Gibson then having the majority of votes, the sheriff, who attended at the bar of the house, was directed to strike out of his return the name of John Stevens, and insert the name of John Gibson.

To adduce arguments to prove the inconvenience to the people at large, and the difficulties they must labour under, if the doctrine is allowed, that the county courts are ambulatory, would be mispending time, as I am certain there is no man acquainted in the least with the nature of public business, but what would discover abundance of instances to support the truth of the proposition; every jurymen, every witness, and every suitor, would soon, from experience, discover it, and would have cause to lament it; but as the attempt is supported by any written law, contradicted by constant usage and the practice of the courts, against the declared sense of the legislature in a similar case, and of the house of delegates in the case above mentioned, I hope this matter will be settled in future, and the justices of Talbot county must be contented with those powers only which the laws and constitution have given them, and not arrogate to themselves powers that must be injurious to the rights and privileges of the citizens of this state.

If then Talbot county court fell immediately on the adjournment to the Bay-side church, it follows that all the proceedings of that court, after that period, were coram non-judice; but the justices, after holding the court at the Bay-side church for some time, adjourned the court again to be held at Talbot Court-house, and continued sitting there by adjournment until the third of June, which I believe was the first day of June court, at which day a number of the people of Talbot county took the oath, and I suppose claim all the rights of citizenship, and claim to be thought as good whigs as Mr. Perry, who I find took the oath on the eleventh of April, and not before.

As Mr. Perry neglected to take the oath within the time prescribed by law, his taking it on the eleventh of April could avail him no further than to permit him to engage in commerce, but it took off no disability; and the disability of voting at elections, and the holding any office of profit or trust, remain to this day; the mildness of our government having taken off the treble tax, he, among the other nonjurors, is exempt from the payment of it.

If then Mr. Perry continues in the senate, there will be but fourteen members instead of fifteen in that body; for Mr. Perry being ineligible, cannot be considered as one; and although the senate may possibly consider him as one of their body, the house of delegates, from the knowledge of the facts aforesaid, may refuse to do business with Mr. Perry, or may refuse any message sent by him to the house.

This is not the only inconvenience that may arise from Mr. Perry's holding a seat in the senate, for in abundance of instances it may happen, it has already happened in some, that there may be only one member present, including Mr. Perry, at the passage of a bill; if Mr. Perry is ineligible, it is no law, because there must be a majority of the senate to pass a law; the consequence will be this, that in all cases where money is to be levied on the people by any act passed in this way, and the people should refuse to pay, the matter must ultimately be settled in a court of law, and if the judges of the court, under the circumstances already mentioned respecting Mr. Perry, should be of opinion that it was no law, there not being a majority of the senate present when the bill passed that house, the supply bill, or any other act, would not only be by the court declared void, but the officers appointed to execute the law would be put to great expence and trouble.

On the whole of this business, in my opinion, and I speak it with great submission, the only thing left for the senate to do is this, immediately at their next meeting, to declare the election of William Perry, Esq; into the senate, void as he was, at the time of his election, ineligible to any office of profit or trust within this state, and proceed to the choice of another senator, and prepare a bill to make valid all laws passed by the senate, after the qualification of Mr. Perry in the senate.

A NATIVE OF TALBOT COUNTY.

St. Mary's, October 4, 1784.

MADRID, July 20.

THE minister of the marine department has received a letter from don Antonio de Barcello, dated in the bay of Algiers, the 15th of this month. That general officer gives the following account of his expedition, which had been much retarded by bad weather and contrary winds.—He sailed from Cadiz on the 28th of last month, but was two days before the whole fleet cleared the land, two fire-ships executed, who could not weather cape de Subiba. The 9th he arrived

August 20, 1784. have encroached on we taken possession aid out for a ship- e now selling and d whereas the per- ay be unacquainted e public to the said at the corporation, said ship-yard and determined to pro- e give this public ons purchasing the

YNN, jun, clk.

n of Thomas War- of Severn, taken up g, about 13 hands e brand, has been small blaze in his trots and gallops, e owner may have d paying charges.

ember 21, 1784.

the estate of Francis Anne-Arundel coun- tle their accounts the money due or yment; and those tate, are requeste henticated, to BALDWIN, BALDWIN, x. of F R. decc.

SOLD at

e,

ANS, and

G CLOCKS,

amental, and

tion of William T. five miles of Not- ou: 13 and a half ahead, shod before, 9 or 10 years old. on proving property

that the inhabitants tend petitioning the same laid out in- ted. 3

ember 25, 1784.

the last will and testa- e of Anne-Arundel ale, on Monday the fair, if not the next

Montgomery county, acres of good land, joining the lands of iam Robertson, and t 6 miles from the miles from Bladenf- and 30 from Balti- y in the county for orn, and small grain s cleared and under woods, with a great e of the plantation; tom land, that with rted into good mead- med dwelling house chimney, and a good n finished, a kitchen, n loft, stables, and with two out houses at would answer for d in garden, and a dwelling house; a eral other kinds of e to view this place new it by applying y near the premises. hird of the purchase e, and a long credit ying good bond and putable title will be on given on or be- next, by the sub-

N, executrix,

GUE, } executors.

AN, }

le to the next gene- the heirs of the late of property, or com-

Charles-Street.