

MARYLAND GAZETTE.

T H U R S D A Y, D E C E M B E R 8, 1785.

To the P U B L I C.

I shall be the business of this paper to state fully a late transaction, that you, my fellow citizens, may understand it and judge for yourselves.

The general assembly, at their April session in 1783, passed an act, empowering the governor and council to appoint an agent, and investing him with certain powers and authorities respecting the bank stock of this state: and by the same act they authorized the governor and council to give a conditional commission, not exceeding four per cent. As it was their duty, and the commission was liberal and competent, they looked for one of the ablest characters in the state, and appointed him agent. There is nothing in this act, which relates to law-suits or bills in chancery, nor was any authority communicated to prosecute or defend suits in law or equity: the expenses therefore of such proceedings were unforeseen, and consequently never considered, nor comprehended in the commission, which the act allowed the agent.

The agent, in August 1783, embarked for England: and after the ablest efforts and the most distinguished exertions of talents and address for upwards of six months, he found it impracticable to accomplish the great objects of his agency, and therefore resolved to return: but, whilst he was making preparations for his voyage, one of the trustees of the bank stock exhibited a bill in chancery against him, and he was stopped by process from the chancery court. Upon which the agent filed a bill against the trustees, and then followed a bill by certain British subjects, to be indemnified out of the bank stock for their confiscated property.

The agent was thus involuntarily involved in chancery suits, and detained in England: and it is but justice to acknowledge, that in prosecuting and defending these suits, he gave the most signal proofs of a great lawyer and faithful agent.

By his indefatigable exertions, the chancery bill, which the trustee filed against him, was in the course of three months brought to a hearing and decision: and by the same continued and unremitting labour, vigilance, and attention, he completed the proceedings upon his bill against the trustees, and obtained an hearing so early as July 1784: but his counsel had scarce opened the argument, when the chancellor interposed, and stopt further proceedings, suggesting the propriety of making the ATTORNEY-GENERAL of England a party to the bill. This the agent peremptorily refused, as it implied an acknowledgement that the British crown had an interest in the bank stock: and he immediately addressed the British minister, stating the circumstances of the case, and requesting, that if the forms of proceeding should require the attorney-general to be a party, that he would direct him to make a disclaimer of all right and interest in the crown: but no answer was or could be obtained from the minister. Here then was a difficulty, which the agent saw could not be removed but by the general assembly of this state: leaving therefore these chancery proceedings in the hands of the ablest counsel in England, he embarked and returned to Maryland.

The general assembly, at their November session 1784, took into consideration the faithful services of their agent, and returned him their thanks in the following resolve, viz.

Extra from the notes and proceedings of the house of delegates, January 15, 1785.

Mr. Chase, in his place, offers the following paper to the house, and begs leave to have it inserted on the proceedings; which was unanimously agreed to.

1. Mr. Chase considers the expenses for his voyage and in England for seven months (from 7th September to 1st April, about £. 500 sterling) to be his loss, as his contract was conditional to receive 4 per cent. if the bank stock was recovered.

2. Mr. Chase considers his expenses (except the fees to counsel and solicitors and the charges of his suits) for five months (about £. 250 sterling) to be his loss, within the letter, but not within the spirit, of his contract.

3. Mr. Chase considers the suits as a matter not in the contemplation of the state or himself, and being involved in them not from choice but necessity, that therefore the actual expense in the suits ought to be paid by the state. Mr. Chase has no bill of the expenses.

4. These things are stated, on the supposition that Mr. Chase's commission is now subsisting and is to be continued; and in that case Mr. Chase wishes a sum of money to be advanced him, to be accounted for, and to be deducted out of his commission, allowing only the fees to counsel and solicitors, and the charges in the suits. Mr. Chase, if required, will give security to account.

5. If Mr. Chase's commission was ended on the 1st of April, or even now, and the business in its present situation (almost ready for decision) is taken out of his hands, he expects all his expenses will be paid by the state.

6. If the state will pay only the expenses to counsel and costs of suits, and will determine his authority, and take the management of the causes from him, he will lose the chance of receiving the stipulated commission, and sink about £. 750 sterling.

7. If Mr. Chase's commission expired on the 1st of April, or is now finished, and he dismisses his bill, and it cannot be expected he should continue it at his expense, the bank stock will return to the trustees.

SAMUEL CHASE.

Annapolis, 21st December, 1784.

By the HOUSE OF DELEGATES, December 3, 1784.

On reading and considering the several letters to his excellency the governor, from Samuel Chase, Esq; respecting his agency, Resolved unanimously, That it is the opinion of this general assembly, that the said Samuel Chase, Esq; in conducting and negotiating the affairs of this state, lately entrusted to his care as agent, hath manifested great zeal, fidelity, diligence, and ability, and a vigilant attention to the honour and interest of this government, and that his said conduct merits, and therefore hath, the approbation of this general assembly.

By order, W. HARWOOD, clk.

Which resolve was agreed to by the senate, two gentlemen only dissenting.

During this session, the assembly passed a supplementary act to the act respecting the bank stock, by which the agent's appointment was confirmed, and all his proceedings in chancery established: and the governor and council were directed by the said supplementary act to instruct him to prosecute his bill against the trustees with all VIGOUR AND EXPEDITION.

And during this session the house of delegates passed the following resolve, viz.

By the HOUSE OF DELEGATES, December 15, 1784.

Resolved, That the intendant of the revenue be authorized and directed to pay Samuel Chase, Esq; five hundred pounds sterling, for the expenses already incurred by him in the two suits in the high court of chancery of Great-Britain, one against the other by him, respecting the stock in the bank of England belonging to this state, and in compensation for his detention in England for five months in consequence of the said suits, and for his personal services in defending, prosecuting and maintaining, the right of this state to the said bank stock.

By order, W. HARWOOD, clk.

This was dissented to by the senate, who afterwards sent the following message, viz

By the SENATE, January 14, 1785.

Gentlemen,

We have considered your message by Mr. Cramphin, and will agree to a resolve to advance to Mr. Chase the sum of five hundred pounds sterling on account of the bank stock, to be applied to the payment of the agent's commission, if the bank stock or part of it is received; and if no part of the bank stock is received upon which the agent is to draw commission, then to be accounted for.

By order, J. DORSEY, clk.

This was dissented to by the house of delegates, who then passed the following resolve, viz.

By the HOUSE OF DELEGATES, January 15, 1785.

Resolved unanimously, That the intendant of the revenue be authorized and directed to pay Samuel Chase, Esq; the sum of five hundred pounds sterling money, to be deducted out of his commission on the bank stock or any part thereof that may be received, after allowing him the actual fees and expenses paid (or to be paid) by him to counsel, solicitors, and the officers of the court of chancery, in the suits in the said court respecting the bank stock, and if no part of the said bank stock is received, the agent shall account for the said money advanced to him, after allowing him the expenses of the suits as aforesaid; and in such event the legislature will take into consideration the services of the agent, and the loss he will in such case sustain.

By order, W. HARWOOD, clk.

But this was rejected by the senate. The business of the session being completed, the house of delegates adjourned to the spring, and the senate to the fall: and the first time of adjournment having elapsed, the power to call the assembly devolved upon the governor.

The agent, agreeably to the supplementary act, was now called upon by the governor and council, and directed to prosecute his bill in chancery with all vigour and expedition. He immediately requested an advance of money to pay the fees and costs of the suit, and declared, without such advance, he could not comply with the act, or the directions and instructions which were given him.

The governor now found himself under very considerable difficulties and embarrassments. He saw it was the clear intention of the general assembly, that there should be no delay in prosecuting their right in chancery: they had, by the supplementary act, in the most pointed terms expressed that intention, by directing the suit to be prosecuted with all vigour and expedition: he considered too, that the wants and necessities of the state required the most expeditious recovery of the bank stock: and having some knowledge of legal proceedings, he knew the great risk and danger of having suits abandoned by counsel for want of money, and left exposed to such rules and orders as the adverse party might obtain.

But how was the agent to be supplied with money? Must the governor exert his constitutional authority, and call the assembly, and consequently create a very inconsiderable expense? This appeared to be a very injurious measure which ought not to be adopted, if any expedient could be suggested to prevent it.

Amidst these difficulties and embarrassments, the governor conceived it his duty to take such measures as he thought the best for the interest of the state: he conferred with his council, who were of opinion the mo-

ney ought to be advanced out of the public treasury, if the circumstances of the treasury would admit it: he addressed the intendant upon the subject stated his difficulties, and submitted the propriety of the advance to his opinion and judgment. The intendant thought such an advance was the best expedient that could be adopted, and accordingly made it, taking bond of the agent to account for the expenditure and surplus, if any.

Upon the meeting of the assembly, the governor took the first opportunity to communicate the transaction by an address, and the intendant took the earliest opportunity to report it.

This, my fellow citizens, is the mighty transaction, which some men would misrepresent and swell into a crime of the first magnitude, requiring a legislative investigation and inquiry: a transaction, which originated from the purest intentions, and was evidently calculated to prevent an unnecessary accumulation of our public debt.

I will now consider some of the principal objections which the honourable accusers of the late governor, and of the intendant, are pleased to make to this transaction.

They say, that this advance for fees and costs was made after the senate had expressed their disapprobation of it on agitating its propriety during the session.

I will admit, for argument's sake, that the senate had expressed a disapprobation of such an advance for fees and costs; what, I ask, is to be inferred from it? Not, I hope, that the governor and intendant had wantonly disregarded their opinion and sentiments. Wickes and mischievous spirits only can suggest such an idea, or draw such an inference: men of candour and humanity will think and reason very differently: they will consider the circumstances and events, which intervened the disapprobation and the advance: they will consider the difficulties which arose after the session, and which the senate could not have foreseen: difficulties which resulted from the law, which the general assembly passed, directing a prosecution of their right with all vigour and expedition: they will also consider, that the governor could not possibly comply with this direction of the legislature without a supply of money, and that he had no other alternative than to recommend an advance of it out of the public treasury, or to call the assembly, which would put the state to a very considerable heavy expense: and considering the transaction with such temper and candour, they would find that the governor and intendant were influenced by no other motives than a regard for the interest of the state.

But I contend, that the senate never expressed any disapprobation of such advance for fees and costs. I have examined the journals of the senate, and I can find no such opinion or sentiment expressed or declared.

It is true, the senate dissented to the two resolves from the house of delegates: but let it be remembered, that those resolves contained other material objects besides an advance to pay fees and costs: the first proposed an advance to pay expenses already incurred, and an indemnification for the agent's detention in England: the other contained an engagement to make compensation at a future session. It cannot therefore be inferred merely from the senate's dissent to these resolves, that they were opposed to an advance to pay fees and costs, when there are other material grounds on which the dissent might have been given.

But it is said the senate's message implies a disapprobation of such advance. I deny it: there is no such implication: it only says; that if the bank stock be not recovered, the money shall be accounted for. But how accounted for? Is there any thing in the message, which prevents, on such accounting, a discount of all legal expenditures or claims in bar?

Suppose the advance had been made in the very terms of the senate's message, and the bank stock not recovered nor commission received. Suppose the agent called upon to account for the money advanced, agreeably to the senate's proposition, and the agent should exhibit an account in bar of fees and costs, that he had paid equal to the sum advanced him; would he not be entitled to a discount of such claim, and to balance accounts with the state? In my opinion, he would be most unquestionably entitled to such discount.

But it may be objected, that if such discount was to take place, the senate would be clearly deprived of a negative upon the question, whether the public shall pay the fees and costs of these proceedings in chancery: and thus their right of legislation would be violated in a very essential point.

This objection proceeds upon the postulation, that the senate have a negative upon this question, when in fact they have no such negative.

This position I dare say will appear strange to some of their honours: but it can be a matter of wonder to those only, who are unacquainted with our constitution and government; and the laws which relate to our money transactions.

Let it be remembered, that the power to adjust, liquidate and pass accounts for public services, is delegated by act of assembly to the AUDITOR and INTENDANT, and that the power to draw on the treasury is by law also delegated to the intendant; let it be remembered, that by the common law of the land, and by all the principles of equity and conscience, every citizen has the right of discounting; and let it be remembered, that by the CONSTITUTION and GOVERNMENT of this state, the senate have nothing to do with settling or passing of accounts for public services: this

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