(XLIst YEAR.) THE (No. 2031.)

MARYLAND GAZETTE.

THURSDAY, DECEMBER 15, 1785.

To the PUBLIC.

IN my last address I stated the transaction which the HONOURABLE ACCUSERS of the late governor and of the intendant, have represented as an offence of such magnitude as to demand a *legislative* inquiry and investigation: I take the liberty to address you again upon that subject, and to subjoin a few remarks and observations upon it.

It has been represented, that there was no authority at all to justify the advancing the agent a sum of money to pay the *fees and costs* of the suits in chancery: that the idea *originated* with the late governor, and that it was suggested by his *attachment* and *partiality* to the agent.

It is freely acknowledged, that the most perfect intimacy has subsisted between these gentlemen from their first public appearance in the world to the present day: but it is a most wicked calumny to say, that the advancing the agent a sum of money for *fees and costs* was a proposition that took its rise with the late governor, and resulted from partiality and personal views.

Every one who has read the proceedings of the last session of assembly must know, that the proposition to advance money to the agent for the *fees and costs* of the chancery suits in England *originated* with the house of delegates: they passed several resolves upon the subject: both of which are explicit declarations, that the *fees and costs* of those suits should be paid by the public: and consequently, that the *expences* of these suits were not comprehended in the agent's commission, which was given him *conditionally*: they were UNANIMOUSLY of that opinion. The resolve will speak for itself.

By the HOUSE of DELEGATES, January 15, 1785.

Resolved unanimously, That the intendant of the revenue be authorised 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 expences 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 expences 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.

This resolve was sent up to the senate, and on a question to agree to it the division stood as follows, viz.

The resolution respecting the advance of five hundred pounds sterling to Samuel Chase, Esq; was read the second time, and the question being put, That the same be assented to? The yeas and nays being called for appeared as follow:

AFFIRMATIVE, The honourable Thomas Stone, William Hindman, Samuel Hughes, and William Perry, Esquires.

NEGATIVE. The honourable John Smith, Esq; president, the honourable Charles Carroll, of Carrollton, Daniel Carroll, Edward Lloyd, and George Gale, Esquires.

Determined in the negative.

With what truth or justice then can it be said that the late governor was the first who proposed the advance, when the journals of both houses demonstrate that the measure *originated* with the house of delegates: who were UNANIMOUSLY of opinion, that the *fees and costs* should be paid by the public, and consequently were UNANIMOUSLY of opinion, that the *expences* of the chancery suits were not comprehended in the conditional commission to the agent: and of this opinion were *four* out of *nine* members of the senate *decidedly* and *expressly*.

But the HONOURABLE ACCUSERS are not yet satisfied with the propriety of this advance: they still think that it was illegal, and that there is no law to justify it.

I have already requested the attention of the public to the supplementary act to the act respecting the bank stock: this act was passed *after* the resolves relative to an advance of money had been agitated and finally decided upon: and it establishes and confirms all the proceedings in chancery, and directs the suits to be *prosecuted* with all *vigour and expedition*: it took its rise in the house of delegates, and when it came up to the senate and was put to its passage, the division stood as follows, viz.

The bill, entitled, A Supplement to the act, entitled, An act concerning the stock of the bank of England belonging to this state, was read the second time, and the question being put, That the same do pass? The yeas and nays being called for appeared as follow:

AFFIRMATIVE. The honourable John Smith, Esq; president, the honourable Thomas Stone, William Hindman, Samuel Hughes, William Perry, and George Gale, Esquires.

NEGATIVE. The honourable Charles Carroll, of Carrollton, Daniel Carroll, and Edward Lloyd, Esquires.

Carried in the affirmative.

We see that the honourable John Smith and George Gale, Esquires, voted for this supplementary bill; they left the division with whom they voted in rejecting the resolve of the house of delegates respecting the advance, and on this bill joined the division who were for adopting the resolve and acceding to the advance.

But the legislature, I have said, directed the governor and council to instruct the agent to *prosecute* the bill in chancery with all *vigour and expedition*: now they knew this could not be done without a supply of money to pay *fees and costs*. When, therefore, they passed the supplementary act, they must have considered and had in view the *purse* out of which the money was to be advanced. I ask, what *purse* was it, the *public purse*, or the *agent's purse*?

There is no doubt what *purse* the HOUSE OF DELEGATES meant: they had UNANIMOUSLY resolved the *public purse* should pay the *fees and costs*. And there can be as little doubt of the intention of the majority of the senate who voted for the supplementary bill: for *four* out of the *six* had expressly declared their opinion, that these expences should come out of the *public purse*.

But the HONOURABLE ACCUSERS may ask, what was the opinion of the honourable John Smith and George Gale, Esquires, with respect to this matter, when they voted for the supplementary bill?

I don't see the tendency of this question, nor the force of it: the sense of the majority must ascertain the intention, and we have seen what that is. But there is nothing on the journals which shews *expressly* that these two gentlemen entertained a different opinion. But admit that such an opinion may be implied or inferred from antecedent transactions, will it follow that they *retained* that opinion when they voted for the supplementary bill? We see them, on this bill, leaving the division who were opposed to an advance, and joining the division who advocated the measure, and by that junction making a majority in the senate for passing the bill. Is there not, then, the justest ground to infer, that they had relinquished their former opinion, if indeed they ever did entertain such opinion, and adopted the ideas of the *four* gentlemen with whom they had now associated? They knew that the whole house of delegates meant by the supplementary bill, that the *public purse* should pay the *fees and costs* of the suits it confirms and directs to be prosecuted: they knew that the *four* gentlemen, with whom they associated, meant also, by the supplementary bill, that the *fees and costs* should be paid by the public. If these two gentlemen were of a different opinion, I presume they would have voted against the bill: but as they voted for it, they must have either waved such opinion, or adopted the sentiments of the house of delegates, and of the *four* members with whom they associated.

Upon this state of the transaction, and of the proceedings of both branches of the legislature, what man of a clear head and upright heart can possibly think the late governor and the intendant had no authority to countenance or to give a sanction to the advance which was made the agent? An advance warranted and justified by the sense and opinion of a whole HOUSE OF DELEGATES and of a *majority* of the SENATE on the vote for the supplementary bill.

But if the late governor and the intendant have been guilty of HIGH CRIMES and MISDEMEANORS, in the opinion and judgment of the HONOURABLE ACCUSERS, why are they suffered to go at large? Why not laid by the heels, and brought to punishment? Why do these HONOURABLE ACCUSERS rail and clamour about it, and yet take no *legal measures* to have government and its laws vindicated? I call upon the HONOURABLE ACCUSERS to prosecute their CHARGES and ACCUSATIONS: they must do it: they shall do it.

But possibly I may be asked, what judicature shall decide upon these CRIMES and MISDEMEANORS? I answer, any judicature established by the constitution and government of the state of Maryland: where there may be a fair and impartial hearing, and a fair and impartial decision.

But what think you, I may be asked, of the design which the HONOURABLE ACCUSERS have in contemplation, of erecting the SENATE into a COURT OF JUDICATURE, to try the late governor and the intendant for their high CRIMES AND MISDEMEANORS? a judicature, where these HONOURABLE ACCUSERS may be PARTIES, WITNESSES, and JUDGES? What think you?——Patience Heaven!

But suppose these HONOURABLE ACCUSERS, actuated by those principles of humanity and mercy which they are to pre-eminently distinguished for, should moderate their vengeance, and should *only* labour to erect the senate into a court of judicature, not for *corporal punishment*, but for CENSURE and REPROOF? What think you, I may be asked, of such a TRIBUNAL OF CENSORS, or COUNCIL OF CENSORS, or what you please to call it?

I answer and say, I know of no such TRIBUNAL OF CENSORS, or COUNCIL OF CENSORS. The constitution and government of this state knows of no such POLITICAL BODY. I have heard of such a thing in the state of Pennsylvania, which by the constitution and government of that state comes forward every seven years, to SHAKE and CONVULSE the community: but even there it is not a SELF-CREATED TRIBUNAL: it is elected by the people at large, and extends to all *public characters*, and takes in the LEGISLATURE itself. But in what part of the constitution and government of this state are we to find the SENATE of Maryland a COUNCIL OF CENSORS, or a SENATE OF CENSORS, or a COURT OF CENSORS, or a JUDICATURE OF CENSORS? and if they were CENSORS at all I think we should find them by one or other of these appellations. But not a word do we find of any such power or authority in this state, neither in our declaration of rights, nor constitution, nor government, nor laws, nor law books. I believe such nonsense can only be found in some weak head or mischievous heart.

But the HONOURABLE ACCUSERS contend, that to act in the political character of CENSORS is incidental to the rights of legislation: and that the senate, as a branch of the legislature, posses this *political character*, independently and exclusively of the house of delegates. Mighty well, my good Sirs. Why then the house of delegates, being also a branch of the legislature, possess the like POLITICAL character of CENSORS, independently and exclusively of the senate: and so the constitution and government of this state is a blessed one indeed. Here are two independent and exclusive COUNCILS OF CENSORS. Now suppose the senate, in the exercise of their independent and exclusive powers, should CENSURE the house of delegates; and the house of delegates, in the exercise of the like independent and exclusive powers, should CENSURE the senate. What then? Why, like two INDEPENDENT NATIONS, they must fight it out: there is no SUPERIOR to appeal to: the *fist* or *sword* must decide the quarrel.

But, say these HONOURABLE ACCUSERS, are we not mere CYPHERS, if this political character of CENSORS be denied to us? Yes, my *good Sirs*, cyphers indeed with respect to your accusation, unless you can contrive to be yourselves the JUDGES to decide upon it. But is it not ridiculous to say, that a branch of legislature is a *mere cypher*, unless it can assume the authority of a COUNCIL OF CENSORS. What has a COUNCIL OF CENSORS to do with LEGISLATION? I can hardly speak with temper of such jargon and nonsense.

But to be more serious upon this subject.

The declaration of rights (*sect.* 6) provides and declares, that the LEGISLATIVE, EXECUTIVE, and JUDICIAL powers, ought to be for ever *separate* and *distinct* from each other.

It is the business of the *legislative* power to *make* laws: it is the business of the *judicial* power to *declare* and *execute* the laws. The legislative power, therefore, cannot *decide* upon the question, whether a citizen is guilty of an *offence* or *violation* of *law* or the *constitution*: this would be blending the *judicial* with the *legislative* powers, and evidently violating the constitution.

The house of delegates (*form of government sect.* 10) is the *grand inquest* of the state: they have all the powers necessary for a full inquiry and investigation of offences or misdemeanors: they can call for *papers*, *records*, and *send* for *persons*, and may enforce obedience to their *orders* and *process* by imprisonment. But even the *house of delegates*, with all these powers, cannot decide upon the *law*: if upon investigation or inquiry, they think there are just grounds to *charge* and *accuse* a citizen, they can do nothing more than commit him to gaol, subject to bail, and refer the charge and accusation to the *courts of law*—the *fact* to be finally tried by a *petit jury*, the *law* to be *decided* by the *judicial* authority.

But, it said, that although the house of delegates is the *grand inquest* to take cognizance of *offences* and *misdemeanors*, for the purpose of bringing citizens to *punishment*, and the senate is not a *grand inquest* for *such purposes*, yet they have a power to inquire into the conduct of *public officers*, for the purpose of *disapproving* and *censuring* their conduct.

The senate is a *branch* of the *legislature*: their province is to *make laws*. What then have they to do with *censuring* of the conduct of citizens? If citizens have offended against *law*, or the *constitution*, or the *government*, does not the cognizance of such *offences* belong to the *judicial power*? And is not the citizen entitled to a *trial by jury*?

But if, for the purpose of *censuring* the conduct of citizens, the senate have the powers of *inquiry*, this power to *censure*, and this power to *inquire*, with *all the powers* of enforcing the inquiry by *imprisonment*, must be found in the *constitution* and form of *government*. Is there one word of this to be found in any part of our *declaration* of rights, *constitution*, or *government*? When the *founders* of the constitution thought proper to make the house of delegates a *grand inquest*, they declared it in explicit terms, and in terms as explicit gave all the necessary *powers and authorities*. If they meant the senate should be a *grand inquest*, for the purpose of *censuring* or *disapproving* the conduct of citizens, is it possible that they would have been totally silent, and left it to the senate to *assume it*, when they pleased, with all *the powers* of enforcing their inquiry and investigation by *imprisonment*? For it is absurd to say they can constitutionally *inquire* for *any* purpose, without *compulsory* powers to make a *thorough inquiry*.

But how can the senate *censure* or *disapprove*, without assuming to be a *judicature* to decide whether the person *to be censured* has not violated the *law* or *constitution*? And does not *this power* belong to the *judicial branch* of this government?

Again. If the senate have the power to *censure*, it is plain they have *the power* to declare the law, and to adjudge that the person *to be censured* has violated *the law* or *constitution*. Now in all cases where a *judicature* is competent to make *such a decision* of the law, it must be *conclusive*. For nothing can be more absurd than to say, that the constitution has established the senate