

MARYLAND GAZETTE

Containing the freshest Advices, Foreign and Domestic.

WEDNESDAY, February 10, 1748.

Mr. GREEN,

GREENABLE to what I promised in my last, my present Design is to be a little more full and explicit, in considering that very extraordinary Order of Court, which, by means of your Gazette, was expos'd to the Public; and indeed, never did any Thing happen in the Province, of more public Concern; for tho' the Dispute, perhaps, may have taken Rise originally, from the interfering Interests of particular Persons, yet if the Steps taken by one of the Parties, be such, as supposing them to be legal and valid, strike at the Foundation of all Liberty, it is no longer the Cause of private Persons in a particular County, but becomes the Cause of every Man in the Province, who is not inclined to give up those Rights and Privileges, which secure to him his Property, from an unlimited Power contended for in County Courts, to Tax what they please. I call it an unlimited Power, because the Interpretation given to that Clause of the Act of Assembly from which they claim their Power, is without Limitation, and gives them the same Power to levy Five Hundred Thousand or Fifty Millions, as One Hundred Thousand. This Consequence is not deny'd by the Favourers of the Tax, and they insist upon it, that such a Power is really lodged in every County Court by that Act. Now, that every Man may judge for himself in this Matter, the Act is to be found in the 32d Page of the Body of Laws, entituled, *An Act empowering the Commissioners of the County Courts, &c.* The first Clause of that Act, is the Cause refer'd to; but before I enter upon what I apprehend to be a fair Explication of the true Meaning of that Act, it may not be improper to make a few general Reflections.

I thought it had been a Thing notoriously known by every Man, who thought himself qualifi'd to act in a public Capacity, that it was one of the most distinguishing Marks of *British* Liberty, nay the very Soul and Essence of it, for the People, or which is the same Thing) the Representatives of the People, to be possess'd of the Power of keeping their Purse in their own Hands, to be the sole Judges how much is necessary to be rais'd upon them, and to direct the Disposal of it. Of this the House of Commons have always been so well appriz'd, that whenever any Bill relating to raising of Money, has been offer'd them in the House of Peers, they have never fail'd to resent it with indignation, as an Encroachment upon their inherent Rights. This then be a fundamental Part of the Constitution, as I think it can't be deny'd, a Question will arise, Whether a Parliament in *America*, an Assembly, for I presume none will pretend make any material Distinction) has a Power, *i. e.* a Right to do any Thing contrary to a fundamental Part of the *British* Constitution? For my own Part, I would not take upon me to answer this great Question, if it had not been often resolv'd in the Negative by some of the greatest Statesmen *England* ever liv'd. They say it is a vulgar Mistake, to imagine that a Parliament is Omnipotent, or may do any Thing, for that they can't alter the Constitution. There are certain Powers, Rights, and Privileges invest'd in every Branch of the Legislature, by the Constitution; no Part of which can be given up by any of them, without breaking thro' that Constitution, which is the Basis of the whole. To instance in the Case in Hand: As all Money to be rais'd for the Use of the Public, must come from the People, the Wisdom of our Ancestors thought it but reasonable, that the Power of judging the Sum necessary, and directing the Application of it, should be lodged in the People; and after many a bloody Struggle, in Opposition to arbitrary Impositions, they have handed down that inestimable Privilege to us. Seeing the People can't act collectively in a legislative Capacity, they are oblig'd to choose Men to represent them, and for their Interest, in exercising the People's Share in the legislative Power. Is it in the Power then of these Representatives

to give up this antient Privilege of the People? By no Means; for this evident Reason, because in that Case they would not act for the Interest of their Constituents, but they would act against it; which it is absurd to impute their Constitution to give them any Power to do: They sit as Representatives of the People, not to destroy their just Right, but to preserve them. Let us, that in such a Case, the original Compact (which in the very Nature of free Governments must be suppos'd) would be broken, the People loos'd from all Ties of Obedience (if such Power being granted, and so much Obedience out, only on Condition of so many Privileges enjoy'd); and as a very great Author expresses it, the Government dissolv'd of Course. Now, according to this short View of the *British* Constitution, in Defence of which, the greatest Authorities in *England* shall be produc'd, if demanded, the Assembly could not, agree to the inherent Rights of *British* Subjects (and it can never be suppos'd they would act in Opposition to these) invest a County Court with an unlimited Power of Taxing the People at Pleasure, on every frivolous Pretence that they may think proper to call a *public Charge*; because this would be infringing an essential Part of the Constitution, taking from the People the greatest Security they have for their Properties, and conveying that important Power of Taxing, into another Channel, where the People have neither Power or Influence.

Let us suppose, without granting (for perhaps we may deny some of the Particulars before this Subject is concluded) let us suppose, I say, that the Majority of the Freeholders of *Prince George's* County desired that the Court House should continue at *Marlborough*, that there was an absolute Necessity for raising One Hundred Thousand Weight of Tobacco at this Time, to repair it, that from the known *Wisdom and Learning, Impartiality, and strict Honesty*, of the present ruling Magistrates, nothing was to be feared from the Exercise of such a Power, while in their Hands; and certainly nothing is to be apprehended from the worthy Gentleman that at present deservedly holds the Reins of Government in this Province: Yet, in Times to come, an avaritious Governor, designing to enrich himself out of the spoils of the People, may fill every Bench in the Province with a set of Tools for his Purpose; some Pretence or other, under the Title of a *Public Charge*, will never be wanting to levy large Sums; these Magistrates too are to appoint Commissioners to lay it out, and if they render satisfactory Accounts of the whole of this Jobb, to the Governor and Council, they are accountable at no other Tribunal. Here then is a Door open that leads into an endless Labyrinth of Misery: For I desire to know where are the poor, groaning, oppress'd People, under these Circumstances, to find Relief? The Act of Assembly, which it is alledged gives this unlimited Power of Taxing to a County Court, is one of these which are called perpetual Laws, and can't be repeal'd without the Concurrence of all the Branches of the Legislature; the Lower House might indeed remonstrate as a complain, but any one may easily judge what Redress would be given in such a Case. I confess the supposition made is a very improbable one, but it is sufficient for the Purpose it was adduc'd, that it is a possible one; for the People may be happy under the most arbitrary Governments, when a good and wise Prince happens to sit on the Throne; but true Liberty consists in being freed from the wicked Impositions of a Tyrant and Oppressor.

If this Privilege then of the People to tax themselves, be the greatest Security they have for their Properties; if it be a fundamental Part of the *British* Constitution, ought it not to be inviolably preserv'd? And can any Man be call'd a Lawyer, though he makes the Law his Profession, so far from understanding the Laws of his Country, as to be shamefully ignorant of the Essentials of its Liberty, having wriggled himself into the Favour of a weak Magistracy, shall take upon him to mislead them in a Matter of the utmost Importance, by giving them a strain'd Interpretation to a Law in direct Opposition to the Fundamentals of the Constitution? Such an Interpretation as lets a whole County