

Sense, that Sense is to be preferred which is most in favour of Liberty; tho' I fancy there will be little Occasion for it in the present Case, for, if I am not much mistaken, it will not be difficult to shew, that however general and indefinite the Expressions may seem to the Inadvertent, they have nevertheless a limited Signification, that it is only under certain Circumstances County Courts are impowered by this Act to levy upon the People, and that the Tax in Dispute was not imposed under the Circumstances requir'd, and consequently not warrantable by that Law. By this Act County Courts are impowered, upon Examination had before them of the public Charges of their several and respective Counties, and Allowances by them made of the same, to levy and raise Tobacco for Payment and Satisfaction of the several and respective County Charges. These are the Words upon which the extraordinary Order of Court is founded: Now I think it will appear to every one that considers this Clause with due Attention, that it gives the Justices no Power to raise a single Pound of Tobacco upon the People for any Thing, but for Work already done, Charges or Accounts exhibited, examined, and allowed of by the Court: If this should prove to be the Case, the disputes Order of Court must be illegal, at least, not warrantable by that Law (and they pretend to no other); because the Tax it imposes was previous to any Work done, or so much as any Agreement made. To clear up this Point, the only Thing necessary is to determine what ought to be understood by the Phrase *Public Charges*; and in my Opinion, were there any Ambiguity in the Phrase, taken by itself, which I think there is not; yet, if it be consider'd as connected with what immediately goes before and follows after in the same Sentence, nothing can be more evident than that it signifies Charges or Accounts brought against the Public for Services already done the Public. For Courts to examine such public Charges, to make Allowances of them, and to levy and raise Tobacco for the Payment and Satisfaction of them, is good Sense, and easily understood. But, let the Phrase *Public Charges* be taken in any other Sense, and I defy any Man to make any Thing but Nonfence of the Sentence, as it stands in the Act. But some will be ready to say, that if it be granted County Courts have a Power by this Act to raise any Sum by Tax, which they think proper to allow for Work already done, it makes no great Difference to the People whether the Money be raised before or afterwards. To this I answer, first, that the Question is not, what Difference it makes to the People, but what is the Nature of that Power given by the Law, and whether the Order of Court was made agreeable to it or no: This is the only Point in Dispute, and therefore any such Objections are altogether from the Purpose. But to shew those that talk in this Manner, that the Difference to the People is no trifling as they may imagine, I will make them another Answer, and assert, that in this very Restriction consists the whole Security the People have from the Abuses that might be committed by this Law. For it is plain, that nothing considerable can ever be safely undertaken on the Foundation of it, in the Sense explain'd, because the Undertaker must first do the Work, and then bring in his Charge; which must be examined and allowed by the Justices, before they can levy for the Payment of it. Now the Risk in this Case is so great, that no prudent Man would ever choose to run it, in a Matter of any Importance: The same Justices that encouraged him to do the Work, might take it into their Heads to clip his Account unreasonably; nay, one or two new Magistrates might turn the Scale, and create a Majority against the Service, and disallow the whole. Instances might be produced of both these happening, which will be always a sufficient Discouragement from taking considerable Jobs in hand upon such a precarious Footing.

FROM hence it appears, that the Power lodged in County Courts by this Act, to levy upon the People, was only intended for the Payment and Satisfaction of small Charges, which, by the Method directed, are supposed to be so evidently just and necessary, that no Court whatever would refuse to allow them; and at the same Time so very small and inconsiderable, that no Man would scruple to run the Risk of it. Nothing is more to be regarded in Laws, than the Intention of the Legislature in making them; if this can be clearly discover'd, any Construction that may be made of the Letter in Contradiction to the Intention, is never of any Weight with the Judges of Law: Now the true Design of this Law will be further evident, if it be consider'd, that all Things, of any Consequence to be done at the Expence of the Public, so far as the Legislature thought fit to leave them to the Direction of Courts, are particularly mentioned in different Acts of Assembly, and effectual Methods for

the Performance of them directed: In every one of these Courts are limited to a Sum, or to an express Appropriation; for the most part in both, as has been already hinted. The Legislature, foreseeing that several Occurrences might happen in Counties, which would be difficult or tedious to enquire, thought proper to lodge in County Courts a general discretionary Power, to judge of small petty Charges on these Occasions, and to levy for the Payment of them, in case they appear to be reasonable; and this seems to be the plain Intention of the Act. *De minimis non curat Lex*, is a known Maxim of Law: The Legislature knew very well, that nothing but small Matters, nothing but Things undeniably just and necessary, could be safely undertaken upon the Foundation of this Act: therefore they thought their usual Cautions unnecessary on this Occasion, no considerable Damage could ever be done to the Community while it was strictly observ'd, and as for trifling Instances, *De minimis non curat Lex*.

THUS I have endeavour'd to explain the true Meaning of this controverted Act, and, I hope, shewn, to the Content of every unprejudiced Man, that it gives no Power to County Courts to raise a single Pound of Tobacco (far less one hundred thousand) upon the People, unless it be to discharge Accounts actually brought against the Public for past Services; and from the Nature and Circumstances of the Thing, it could never be intended by the Legislature to extend further than to provide for the Payment of small Charges. They could never conjecture, that a Court which has no Power to hold Cognizance of a Sum of above thirty thousand Pounds of Tobacco, would ever claim a Power by this Law to levy hundred thousand: Surely levying one hundred thousand Pounds Cognizance of a Sum above thirty thousand, and consequently exceeding their Jurisdiction. It is mere Quibbling to say, that this Limitation of County Courts Jurisdiction with respect to Actions of *Mortgage* and *Taxum*; for where can we find any such Distinction made? and as this Sum was limited to one Service, the Public in this Case is but as one Man.

NOW what will it avail in answer to all that has been said, to tell us, that Instances may be produced of considerable Sums having been levied by County Courts, previous to any new Law, when they had no other Law than the Act in Dispute to support them in it. Supposing the Fact true, what then? Will one illegal Act vindicate another? Those who read in this Manner ought to remember the Rule, *a factum est pro datur consequentia*. If Money has been raised for Things not acknowledged necessary, without Law, and wink'd at by the Man though himself injured, will that vindicate an expedient Action, dangerous in its Consequences, and open to the Complaints of by above two Thirds of a County? No sensible Man will say so. The Law is now Forty Year old, this is the first Time that ever any such Power was pretended. I hope it will be the last. All other County Courts in the Province have upon the like Occasions, when they judge a large Sum necessary, apply'd to the Assembly for a particular Act impowering them to raise it. This is the regular, and the constitutional Method, this is the Method consistent with Liberty. For if this Law gives a Power to raise one hundred thousand Pounds of Tobacco, it gives the same to raise one hundred Millions. I demand when does it stop? How can it be controu'd? Should it be acknowledged that the Act gives County Courts this Power, no superior Court of Law can controul them, even if they were inclin'd, because it is the Business only to declare what is Law; nothing less than an Act of the Legislature repealing the former could do it; and all the Branches of the Legislature could not or would not repeal about it, an unlimited Power of taxing must still remain in County Courts: And then instead of rebuilding Court House I can't see why they might not in Time build Fortifications, Standing Armies, levy Ship Money, or, in short, raise any Sum upon the People for whatever they thought proper to give a Title of publick Charges to. If any Man will shew me such an Use might not be made of the ample Power granted for, *erit mihi magnus Apollo*.

NOTHING I think will more properly coincide with the Subject, than to shew the Sense of the Legislature in the Title of the same Nature, and exactly parallel in all it's Circumstances to the present Case. It appears by the printed Votes and Proceedings of the Lower House of Assembly for the Year 1739, that a Petition was preferred by the Justices, of the County, to the House, praying Leave to bring in a Bill