

MARYLAND GAZETTE.

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WING to many causes, England had been hitherto so much taken up with the affairs of Europe, that her ambition had not begun to extend itself with regard to the limits of her possessions in North America. But after the peace of Aix la Chapelle, this became her object, and she was daily making encroachments on the territories of France in this quarter. It is difficult for us, who have taken all our ideas from the representations of Brit*in, to be persuaded this encroachment. Like the feudatories of a great chieftain, we have never examined the circumstances of the inroad, but explicitly admitted the justice of the claim, and have drawn our swords to defend it. It is difficult, more especially, as we ourselves were interested in the matter, and whatever extent of territory was taken away from France, was added to our settlements. Nevertheless, though I do not mean to enter minutely into the discussion of this affair, yet it will easily appear, that our former ideas of ambition on the part of France, arising from the disputes relative to her possessions on this continent, were very ill founded. At the conclusion of the peace of Aix la Chapelle, England had a flourishing marine, and could give us almost to the whole commercial world. From what we know of the nature of individuals, and of nations, it is more reasonable to suppose, that in this case England would be ambitious, than that France should be so, whose naval force was almost totally destroyed, and in the year 1741, had scarce one ship of force remaining. Be this as it will, we may now speak of these things freely, as we are no longer connected with that land, and as they never can be the ground of debate between France and us.

It was no easy matter to settle clearly and precisely the boundaries of the possessions of the two crowns on this continent, the ancient treaties relative to these, being obscure or rather intelligible. At the treaty of Aix la Chapelle was regulated, that all things should be on the footing they were, or ought to be, before the war. These indefinite words, as we have remarked in former paper, left it with either party to make their own construction of the boundaries; and hence it was, that the English, from the settlements bordering on what is called Nova Scotia, and what was then called, and still retains the name of Canada, were making daily encroachments on the French settlements; for though this was not as things were; yet it was as they ought to be, before the war.

The court of France made her first complaints to England in the month of June, 1749; and to put a stop to the daily hostilities, which might break up a new war, proposed to name commissioners, who might settle in an amicable manner, the limits of the English and French colonies. The king of Great-Britain, then George II, named commissioners to meet for that purpose, commissioners at Paris, but hostilities between the settlements on the river St. John, and other places, continuing daily in America, it answered little purpose for the king of England to order simply that his subjects of these colonies should not invade the possessions of the French habitants, either on the side of New Scotland, or Hudson's bay; for as no boundary was precisely fixed, and as the British colonies were more powerful than those of France, they used force to obtain that which they had claimed, and which had not been willingly relinquished to them.

France, as she was not prepared for war, made use of every means to preserve peace. Orders were given at different times to the marquis de Jonquiere, governor of Canada, "to refrain from the least encroachment on the rights of the English; to conduct himself, with regard to them, with all that attention to peace, which could be compatible with the honour of the nation, and the preservation of its possessions; to join the officers which he might detach to the posts in the neighbourhood of the English colonies, to conduct themselves on the same principles; and in one word, to avoid every thing which could give the least foundation to complaints against them."

September 21, 1750, the commissioners presented their memorials to their respective courts, concerning the limits of Nova Scotia, in which they differed widely from each other, the French making the *antient limits* to commence from the extremity of Francis bay, to cape Santa Maria, along the coast, and ending at Cape Canseau; the English contending, that under the description of the *antient limits*, were contained all the lands which extend from the river Kennebec to the mouth of the river St. Lawrence, and from the river St. Lawrence, to the north as far as the Ocean. January 11, 1751, the British commissioners sent in a memorial to prove the justice of their demands. The French commissioners replied to this, and it must be confessed, refuted what their adversaries had considered as demonstration. Indeed it was easy to prove that the reasonings of both were uncertain, and the great fault was, that supposing this, they respectively did not enter into a treaty, with a disposition mutually to concede, and so adjust the difference. What end did it serve to run back to the origin of the French and British establishments in America, to cite the authorities of navigators, historians, writings, maps, patents given by both courts, commissions to their officers, and the letters of those officers. This labour might discover great knowledge, but lost no end to the controversy.

When we read in the 18th article of the treaty of Utrecht, that the king of France cedes to England, Nova Scotia heretofore called Acadia, in its whole extent, according to the *antient limits*, we must acknowledge, in good honesty, that these words determine nothing, for how could there be *antient limits* in a country which had been inhabited only by savages before the Europeans had fixed themselves in it. From the manner in which the Europeans fixed themselves in provinces, of which they knew not the extent, and where they really did possess only the lands which they cultivated, how could they have certain limits? They extended themselves by little and little; they built forts, and the countries comprehended between their territories were subject to the same jurisdiction. On one and on the other side, they had but reasonable expectations of the final possession. The government one while more, another while less extended, had no constant and determinate territory; the separate colonies united, the united colonies became separate, and in the midst of these continual revolutions, how could there be found certain traces of certain limits? England had, by this time, sent an army under the command of general Braddock, to attack the French on the Ohio, when the minister of France made a farther proposition, January 13, 1755, to place matters on the footing they had been, until commissioners could be appointed to settle them in some prompt and immediate manner. A negotiation in consequence of this commenced, and France consented "to evacuate all the lands situate between the western mountains and the Ohio river, so that this extent should be considered as a neutral country, until by the convention set on foot, it should be settled to whom it should belong." These propositions of the French court would very probably have produced a salutary effect, if they had been sent four years sooner; but the British court was now weary of negotiations; every disposition had been made for war, and her expectations were too high, easily to renounce them. In answer to this proposal of a treaty, the court of England sent, May 5, 1755, a number of articles, by which it was demanded, amongst other things, that France should demolish her fortifications on the borders of Canada: a boundary line of her possessions was, at the same time, pointed out, by such lines, and such degrees of latitude, as would greatly circumscribe her within her former claims.

This was in fact to reject the proposal of a treaty; nevertheless France still continued to make advances towards an accommodation, and in a memorial from her minister she wisely observed, "That if thoughts of war should continue in America, or should hostilities continue upon the sea, advantages on either side would serve only to multiply pretensions, and furnish new obstacles to an accommodation;" adding,

that sincerely to desire peace, and not to use every means to prevent war, were things incompatible.

The court of England was, no doubt, convinced of this, but answered, "That she could not consider an armistice as a means that could favour a reconciliation. Nevertheless a negotiation was continued, because the French court, conscious of her own weak state, could not give up the hopes of peace, and England had some reasons not yet to declare war.

In a memorial which the ambassador of France presented to the court of London, May 14, 1755, it was proposed, for a basis of negotiation, "That Nova Scotia, though it comprehended but a part of the peninsula on which it was situated, yet from a love of peace, France would yield the whole peninsula to England, on condition that the French who are there settled, should enjoy, for three years, the liberty of retiring with their effects. This cession she would make, reserving only the isthmus, which she could not, without renouncing at the same time the communication, during a great part of the year, to several of her western possessions."

In answer to this, the court of London renewed her propositions of March 7, and observed, "That the conditions on which the court of Versailles consented to abandon the peninsula, were subject to many obstacles, and unfurmoutable objections, so as to render the possession of it useless, and that it would be as well for England not to possess it at all, as not to possess what was the principal part." The court of London remitted a farther memorial, with some questions relative to a negotiation, but in the mean time had given orders to admiral Boscawen to commence hostilities, and June 8, 1755, the Alcides and Lys, two French vessels, were captured in the seas of America.

It is needless to say in what manner the war in America kindled up a war in Europe. It was because, while France was vulnerable to Britain, on this continent, the possessions of Britain, were vulnerable to France, in Germany.

I have drawn out these particulars to some length, because I well know, that though our prejudices against the French nation came principally from the island of Great-Britain, yet they were considerably rivetted by our contests on this continent. For it is natural for all men to think their own cause just, and I have rarely met one who has been able to acknowledge the good qualities of his adversary. But as we easily admit, that many of those things which were done by us long ago were not justifiable, so with regard to our conduct to the French nation, while they were our neighbours on the continent, we now censure or approve freely: and I believe when we come to consider the matter at a future day, we shall be sensible that though France yielded to the superior fortune, and superior force of the British arms, yet she was even in the commencement of the debate the injured party, and we who were formerly the British colonies acting offensively against her, obeyed rather the impulse of the British counsels, than any sound deductions of reasoning relative to the ground of the quarrel. Be this as it may, Providence has made that brave nation our best friends, and if at any time we have concurred in treating them hardly, our best reparation will be a steady adherence to this alliance, with which we are so much honoured, and, in which we are so happy.

THE HONEST POLITICIAN.

To the PUBLIC.

THE intended confiscation of British property has occasioned a difference of opinion between the two branches of our legislature. A bill for seizing and confiscating that property, originated in the house of delegates, was sent to, and returned by the senate, with a negative, accompanied by a message, explaining the reasons of their rejecting it, at the last session. The delegates answered the senate's message, a few hours before the two houses adjourned: the senate being thus precluded from replying, and the delegates having appealed to their constituents for their instructions on this point,

it may not be improper for an individual to hazard an investigation of, and to attempt to throw such lights upon, the subject, as may enable his fellow-citizens to form a right judgment of the controversy. In this free government every freeman has a right to express his sentiments publicly, on public matters, the conduct, and proceedings of our legislature. Without farther preface or apology, therefore, I shall proceed to examine the reasons adduced in the messages of the delegates to the senate, vindicating the justice and policy of confiscating British property. Their last message is introduced by the remark, that in the discussion of most subjects the disputants frequently mix extraneous matter, in order to draw off the attention of, and bewilder the reader; and then asserts, there are only two points in dispute between the two houses.

First; Whether the seizure and confiscation of all British property (debts only excepted) belonging to British subjects in this state, is supported and justified by the law of nature and nations.

Secondly; Whether policy requires or forbids the exercise of the right of seizure at this time.

Although the message asserts, that the description of British subjects in the bill, the line drawn to ascertain them, whether persons are included who ought not, and the mode of obtaining or disposing of that property, are points foreign to, and which ought not to be blended with, the above questions; I beg leave to differ from this opinion of the delegates. These several matters are so intimately connected with, and arise so naturally out of the subject, that the latter cannot well be developed and understood, unless the former are discussed; the justice and policy of the measure depending on the knowledge of the true objects of the one, and the probable consequences of the other. For surely the seizure and confiscation of British property is not a mere speculative and metaphysical question, on which our legislators are, like school divines, to exercise a subtle ingenuity; for the amusement of the curious, and idle; their duty I apprehend to be very different; they should consider, not only whether by the utmost rigour of the law of nations British property may be justly confiscated, but also, whether the confiscation would be consistent with true policy, and the present practice of the civilized nations of Europe; and whether it be practicable to draw a line, upon the principles of the rejected bill, for discriminating British subjects from our own, without violating our bill of rights, and the perversion of law. The justice of the measure, depending on the proper objects of it, the latter must first be known and ascertained, before we can with propriety determine on the former: the policy of it cannot well be appreciated, and judged of definitively, until the most material consequences, which might probably result from the confiscation of British property, shall be traced out, and exposed to the public view; if in the course of such an investigation, it should be evinced, that every bill, framed upon the principles of the one, rejected by the senate, would be incompatible with the letter and spirit of our constitution, could a more forcible reason for the future rejection of any similar bill be given? Certainly not; as every law repugnant to our bill of rights, it is conceived, is null and void. Besides the objection from the nullity of such a law, there arises another, from the danger of the precedent; 'tis a thing of ill example and dangerous consequence for the legislature to break a new law, more especially a new form of government. Machiavel, in the 4th chapter of his first book of discourses on Livy, has the following pertinent remark:

"The commotions about the tyranny of the Decemviri being composed, and Rome restored to its old form of government again, Virginius cited Appius before the people, to answer what he had attempted upon his daughter. Appius appeared with his nobility about him; Virginius commanded him to prison: Appius cried out, he appealed to the people: Virginius replied, that he who had taken away those appeals from the people, ought not to have any benefit by them, nor be permitted to implore their protection, whose laws and liberties could receive no protection from him: Appius insisted, that they ought not to violate a thing, which they had urged with that eagerness, and ordained with that zeal. And though indeed the life of Appius was wicked enough, and there was no punishment, that he did not deserve, yet it was inhospitable, and contrary to all civil society, to violate their own laws, which were but newly made, and passed with so much importunity; for, in my judgment, there is nothing so indecorous, nor of so ill example in a commonwealth, as the infraction of a new law by the legislator himself." The application is obvious, the quotation needs no comment.

The justice of confiscating the property of British subjects, as aliens, cannot, as I have said, be

determined on, till it be ascertained, upon principles of law, who are British subjects, and whether all British subjects are aliens in this state; for upon the supposition that all British subjects are aliens, and at this time alien enemies, of course incapable of holding any property in this state, the delegates contend it is just and lawful to confiscate the property of all such: Can these British subjects, supposed aliens, be ascertained by the law of nations? If so, what necessity is there for a positive law to ascertain them? If the former law lays down no criterion, by which, in revolutions similar to the present, the subjects of the new are distinguishable from those of the old government, we should have recourse to our common or municipal law to find them out; for before we can ascertain what is private British and alien property, we must first ascertain what British subjects are aliens in this country. The delegates wrongly concluding, that all British subjects are aliens, and choosing, as the easiest method, to declare by a positive law, who shall be deemed British subjects, and aliens, rather than leave that point to be decided by our courts of law, upon legal grounds, originated, and sent a bill to the senate, for that purpose. That the bill included in the number of British, several, whom the subsisting laws of this state consider as its own subjects, and that it would have stripped them of their property, without trial, contrary to our bill of rights, and that this was really intended, will not be denied. If the principles of law, and of our constitution, are to be but a secondary consideration, and the obtaining, at any rate, what is called British, and alien property, should become the first, consistency will not be much attended to, or a strict adherence to our bill of rights regarded. This supposition however is inadmissible. The delegates, no doubt, wish to adopt some rational and consistent plan to benefit the public, without exposing themselves to the charge of having violated their own laws, or the law of nations. The plan adopted by the delegates, at the last session, was not of this sort, but contrary to the law of nations, our common law, and the principles of our constitution. When a war breaks out between two nations (all the subjects in the one, being aliens in the other) according to Grotius, and Rutherford, the property belonging to the collective body of the guilty nation, or to the criminal members thereof, may by the law of nations, be confiscated.

Now admitting (for the sake of argument only) all British subjects to be aliens in this state, the law of nations would not, I apprehend, authorize the seizure and confiscation of any British property, other than what belongs to the collective body, i. e. to the king of Great-Britain, or to his representatives, as public persons, and to the criminal members of that nation, that is, to such British subjects, who have made the injustice committed, by commencing and prosecuting an unjust war against us, their own act by their immediate and direct consent. This I shall be able to prove from the authority of Rutherford. Such of our own subjects, who, patricides like, have fought against their native country in support of despotism, or done any other act, to incur the guilt of high treason, may be cited to appear and to take their trial, or be outlawed, if they refuse.

That the war, on the part of Great-Britain, was in its commencement, and is in its prosecution, unjust, and that the British king and parliament declared the people of these colonies (now states) in rebellion, is certainly true; but that the legal consequences of such a declaration, is the forfeiture of all the property of the subjects of this state, as by the preamble to the bill, and in the messages is declared, I deny. The declaration itself is a nullity in law, and therefore no legal consequences can spring from it. Could the declaration of the British king and parliament convert the lawful and justifiable resistance of these colonies into rebellion? It certainly could not. The very supposition of a whole country being in rebellion, is a monstrous absurdity. That the British government would have abused their victory, and robbed and murdered under the forms of law (to judge from the conduct of their mercenaries) is highly probable; but as the depriving the colonists of their lives and property, had their resistance been unsuccessful, would not have ceased to be murder and lawless rapine; so the confiscating of property, in our power, belonging to unoffending British subjects, even supposing them aliens, which I by no means admit, would favour too much of plunder and indiscriminate revenge. For admitting, that the British government, in case of victory, would have abused it, as stated, yet the abuse of power will never prove the right; and after all, the example would not be worthy of our imitation. The moderation with which the war has been conducted hitherto on our part, contrasted with the savage cruelty of our enemies, reflects on

us the highest honour, and on them the deepest disgrace; let us not therefore do any one act which may tarnish the lustre of our arms and the justice of our cause.

The quotations are little to the purpose, introduced in the last message of the delegates, to prove that the law of nature, when applied to collective persons, as moral agents, is the law of nations; that war, either civil or public, is solely governed by that law, except between nations which have entered into particular compacts. All this is true, and may be admitted without the least prejudice to the assertion, "that the property of unoffensive British subjects is not liable, by the law of nations, to seizure and confiscation." It was scarce worth the while to write to mortals to prove, what will not be denied, that the present war was in its origin a civil, and since the declaration of independence, is become a public or solemn war. The law of nations, those maxims of humanity, and those common laws of war of which Vattel speaks, as cited in the message, must, for the reasons assigned by that author, apply to both kinds of war equally. What he means by the maxims of humanity and moderation in carrying on war, he explains in some measure afterwards, by saying, "nevertheless war being now carried on with so much moderation and indulgence, no guards are allowed to houses and lands possessed by foreigners in an enemy's country; for the same reason, he who declares war does not confiscate the immovable goods possessed in his country by his enemy's subjects, but the income may be sequestered for hindering the remittance of it to the enemy's country. A sovereign may confiscate debts of his subjects, who may be indebted to enemies, or he may prohibit the payment while the war lasts; but at present, in regard to the advantage and safety of commerce, all the sovereigns of Europe have departed from this rigour: and as this custom has been generally received, he who should act contrary to it, would misuse the public faith; for strangers treated his subjects so, only from a firm persuasion that the general custom would be observed. The state does not so much as touch the sum which it owes to the enemies. Every where, in case of war, funds credited to the public are exempt from seizure and confiscation."

The advocates for the measure, indeed, contend that there are no innocent or unoffending British subjects with respect to us; that the guilt of the whole nation is communicated to every individual of it; that there being no treaties or compacts between the United States and Great-Britain, we are left to govern ourselves entirely by the law of nations. These inferences are drawn from the quotations in the message, and the principles laid down, as grounded on those quotations; but the premises (I speak it with deference) will not warrant the conclusions.

The message, quoting Rutherford, says, there are three ways by which a nation may, in a just war, acquire property in the goods, which it takes from the enemies; but what is pretty remarkable, it enumerates only two of the ways, and mentions nothing of the third. I shall therefore supply that defect.

"Thirdly; a nation which has committed a crime, may be punished in the same manner with an individual in the liberty of nature, by being deprived of its goods. But whilst the offending nation thus loses its goods, the nation that takes them will acquire property in them no otherwise than either by being the first occupants, or by receiving the goods as a ransom, by which the offending nation redeems itself from some other punishment. Grotius confines this way of acquiring property in war, to such goods only as belong either to the collective body of the state, or to the criminal members of it. And this restriction is a very proper one; for though an injury which is done by a nation, is communicated to all the members of it, as far as this injury produces an obligation to repair damages, yet the guilt of it, as it implies a disposition to do harm, is confined to the collective person of the nation, and to those particular members of it who have made it their own act by their immediate and direct consent."

Here is a plain distinction set up by Grotius, and approved by Rutherford, between the goods belonging to the collective body of the state, or its representative, or to the criminal members of it, and the goods of such persons as are unoffending members. As far as the injury done by the injuring nation under an obligation to repair damages, the injury is communicated to all the members of that nation, but the guilt, or criminal intention, is confined to the collective person of the nation (in the present case to the king of Great-Britain, the representative of the British nation) and to those particular members of that nation (supposing them aliens) who by their immediate and direct consent, for instance, by approving and egging on the war, in addresses to

the crown, by voting carrying it on in perpetually their own. The not involved in this circumstance, that I am not mistaken, to be of individuals who have publicly expressed abhorrence of this war, led to it. If any of this state, would it to confiscate it, on a reparation of damages. The feelings of every volt at the thought.

All the cases add his reasoning on the goods forcibly taken seas, or during injury, and not to be able, which may be try of the injured, the members of the goods taken from strictly the property is concluded with t which they were ta forth, or an equivocal mandated, they become that nation." Nor stricted to, and un taken from the en images sustained by peace is concluded satisfaction will ne for the damages d not be determined the goods taken o than equivalent or sides, the supposit course idle in th goods taken from damages and exp the nation taking t to more than an expences. In mo case; to write the which never does waste of time and The obligation on the damages it h injured nation hat force of arms, in e be denied, vest a t of the goods taken such satisfaction; flat and entire, t images can be afe war being a part e not be finally liqu war, and it cano whether the enem penation for the injured nation by to be esteemed, u carious possessors ers of the goods ties; and the goo dered rather as p tors, during the v perty. But that t self, I shall give t

"This opinion in war are not of nations, till pe some consent; en them our own by general opinion; moveable goods, have been taken, overrun in war. whilst the war la them, and thoug to make a bette treaty of peace yet the property fort is deemed peace has ascert vidual in treaties moveable goods they acquire pr express consent. conclude, that have in all movet wise acquired in difference is, the ly of the most in public, and ce moveable goods private hands, a consumed, or h not be returne whilst the propo express consent, pails from the a tacit consent."

the crown, by voting for it in parliament, or by carrying it on in person, have made the guilt properly their own. That the whole British nation is not involved in this guilt, is evident from this circumstance, that its first trading city, and if I am not mistaken, some others, and a great number of individuals dispersed throughout the island, have publicly expressed their disapprobation and abhorrence of this war, and of the measures which led to it. If any of these should have property in this state, would it be generous, would it be just to confiscate it, on the two erroneous principles a reparation of damages, and its belonging to aliens? The feelings of every unprejudiced man must revolt at the thought.

All the cases adduced from Rutherford, and his reasoning on them, seem to apply solely to goods forcibly taken from the enemy on the high seas, or during inroads made into their territory, and not to goods, moveable or immovable, which may happen to lie within the country of the injured, and be possessed by some of the members of the injuring nation. Even the goods taken from the enemy by force, are not strictly the property of the captors, till a peace is concluded with the nation from the subjects of which they were taken; "if they," says Rutherford, or an equivalent for them, should not be demanded, they become our own by the tacit consent of that nation." Nor is this observation to be restricted to, and understood of such goods only, taken from the enemy, as may exceed the damages sustained by the injured party; for till a peace is concluded, it cannot be known whether satisfaction will not be made by the aggressor for the damages done, and consequently it cannot be determined before that event, whether the goods taken during the war will be more than equivalent or not, to those damages. Besides, the supposition is inadmissible in fact, of course idle in theory, that the value of the goods taken from the enemy may exceed the damages and expences of the war incurred by the nation taking them, and consequently amount to more than an equivalent for such damages and expences. In modern wars this is never the case; to write therefore, and reason upon a thing which never does happen, is an unprofitable waste of time and paper, to say the least of it. The obligation on the injuring nation to repair the damages it has done, and the right the injured nation hath of doing itself justice by force of arms, in case this just satisfaction should be denied, vest a temporary property in the captors of the goods taken from the enemy withholding such satisfaction; but this property is not complete and entire, till the real amount of the damages can be ascertained; the expences of the war being a part of those damages, as these cannot be finally liquidated before the end of the war, and it cannot be known until that period, whether the enemy may not make some compensation for the losses it hath brought on the injured nation by an unjust war, the captors are to be esteemed, until peace, rather as the precarious possessors than the true and lawful owners of the goods taken by force, during hostilities; and the goods so taken ought to be confiscated rather as pledges in the hands of the captors, during the war, than as their absolute property. But that the reader may judge for himself, I shall give that author's own words.

"This opinion, that all goods which are taken in war are not strictly our own by any law of nations, till peace is concluded, that is, till some consent, either express or tacit, has made them our own by the law of nature, seems to the general opinion of mankind, in respect of immovable goods, such as fortified towns which have been taken, or provinces which have been overrun in war. The captors are looked upon, whilst the war lasts, to be only in possession of them, and though this possession may help them to make a better bargain for themselves in a treaty of peace than they could do otherwise, yet the property which they have in things of this sort is deemed to be precarious, till a treaty of peace has ascertained and established it. It is usual in treaties of peace to mention such immovable goods particularly, and the captors, if they acquire property in them, acquire it by express consent. We may therefore reasonably conclude; that the property which the captors have in all movable goods taken in war, is likewise acquired in the same manner. The only difference is, that immovable goods are generally of the most importance, are in the hands of the public, and can readily be returned; whilst movable goods are of less consequence, are in private hands, and because they have either been consumed, or have not been kept together, cannot be returned so readily. For this reason, whilst the property in the former is adjusted by express consent, the property in the latter is left to pass from the original owners to the captors by tacit consent."

The quotation from Vattel discovers, what is the present, approved, and general practice of all the civilized nations of Europe, with respect to moveable or immovable private property, owned by the subjects of a state at war with another state. And here I cannot refrain from repeating the question which was asked by the senate, whether we would not wish to follow, in this particular, the example of the European nations, rather than that of the piratical states of Barbary? The question was proper and pertinent, but remains unanswered.

It may be said, indeed, that there is no compact or treaty between these states and Great-Britain, and therefore we are left to govern ourselves solely by the law of nations. To judge from the passage cited from Vattel, there does not appear to be any treaty by which the above described property is secured to individuals among the several nations of Europe; such individuals owe the preservation of such property to the usage or custom merely of those nations, and not to any particular or special treaty; a custom which does them honour, and is more conformable to the genuine spirit of the law of nations, than that rigour which is insisted on by the delegates. If we are to govern ourselves solely by the rigour of that law in one instance, why not in all? This, at least, would be acting consistently; and were we to act up to the supposed rigour of that law in all cases, to preserve consistency, we must make slaves of the British prisoners of war: For Rutherford observes, "the law of nature will allow those who are prisoners to be made slaves by the nation which takes them," by way of reparation for damages done; "In Europe, indeed, prisoners of war are not slaves, but their slavery is prevented by the law of each particular nation, and not by any law which all the nations of Europe have agreed to establish among themselves as the common rule of their conduct towards one another. The civil law of each particular nation does not allow of slavery." But the civil law of all, or of most of these United States, allows of slavery, and therefore, if we act up to this misconceived rigour of the law of nations, and in conformity to the subtle reasoning, founded on a reparation of damages, so much relied on by the delegates, we may make slaves of the British prisoners of war. The right, however, has been prudently waved; because the exercise of it would lead to those horrors and cruelties; so justly condemned by reason and humanity. It would neither be safe or honourable to this state to be instrumental in renewing some of those dreadful scenes which disgrace the times of Marius and Sylla; confiscations were a part of their cruel system; I hope they never will be a part of ours, in the extent contended for by the delegates. A confiscation of British property, on their principles, if followed by no other bad consequences, would probably diffuse through the British nation a greater rancour, and a much more general spirit for continuing the war, than what at present appears to prevail in it.

But what British subjects are to be deemed, upon legal principles, aliens in this state? These are not yet ascertained, tho' ascertained they must be, before we can possibly seize and confiscate the property of such, upon the foundation of its belonging to aliens, and alien enemies. Is the acceptance of a pension from the king of Great-Britain, the not coming into this, or some one of the United States, before a particular day, and not remaining in some one of those states, from that time, to the present, to render the pensioners, and the persons not coming over, and residing as aforesaid, British subjects, and alien enemies? If so, they would be punished for the want of foresight; for surely the deprivation, of a natural, and valuable privilege, is a severe punishment. Is the departure from this state on or since a certain day, the 14th of August 1775, for instance, when there was no law declaring such a departure unlawful, to make the persons, so departing, British subjects and aliens? A law declaring them so, would be retrospective, and consequently, contrary to our bill of rights: and without such a law, the individuals last mentioned, could not be deemed British subjects, and aliens; they have not been deemed such hitherto, because there is a subsisting law, considering them as our own subjects, and tribly taxing some of them, as such. The absentees from this state, who have taken up arms against us, or done any other act, to subject themselves to our treason law, may be dealt with, in the manner already pointed out, and their property, should they be found guilty on trial, or be outlawed, will be confiscated to the use of the state. More than this; 'tis apprehended, has not been done by any state in the union, notwithstanding the positive assertion to the contrary by the delegates. No confiscation of British property, as such, has, I believe, taken place in any of these states; what property has been confiscated be-

longed to the disaffected refugees, who were considered as traitors to their country; but the bill for confiscating British property, within this state, rejected by the senate, confiscated that property, on the principle of its belonging to British subjects, and aliens, and not as the property of traitors. If mere residence in the enemy's country, or any one of the above recited incidents or predicaments, is to constitute the residents British subjects, and alien enemies, what court is to try the persons guilty of, or falling under, any of those predicaments? What time is to be allowed, and what evidence admitted, for the proof of the offence and establishment of the facts? As we were formerly all one people, born under the same allegiance, due to one and the same sovereign, and capable of acquiring and holding property in every part of the British dominions, if mere residence in the enemy's country is to constitute the residents British subjects and alien enemies, it seems but reasonable, that this state should have issued a proclamation, ordering all, who might have property within it, or chusing to become members of it, to repair hither by a fixed day, allowing a reasonable time, and announcing the consequences of not complying with the summons. As no such proclamation was issued, to pass a law, declaring the persons under any of the predicaments already mentioned, British subjects and alien enemies, and in so doing to strip them of the birthright of natural born subjects, is not consonant to the principles either of natural or common law. All British subjects, born before the declaration of independence in any part of the British dominions, are natural born subjects, and consequently cannot be aliens to each other, and cannot be divested, by act of assembly, of that natural, inherent, and indelible character. "For tho' it be said (see ad Ventries 6) that an act of parliament may do any thing, that must be understood as to civil things, which are but the creatures of men, therefore may be altered, and disposed of, at the will of the supreme authority: but natural things are not within its power, for an act of parliament cannot make a man to be born in any other place than where he was really born;" and consequently cannot make a man cease to be a natural born subject who really is one; but a natural born subject cannot be an alien, therefore an act of assembly cannot make an alien. The messages, indeed, of the delegates, and the preamble to the rejected bill assert, that by the declaration of independence, all British subjects became aliens in this state, and the British nation being at war with us, alien enemies, and therefore incapable of holding any property within this state. Although I have but little knowledge of the law, yet will I venture to pronounce; the delegates have in this point mistaken the law. While the duchies of Normandy, Guienne, Anjou, and Britain, were under the actual obedience of the kings of England, persons born within those duchies, according to lord Coke, (see Calvin's case) "could inherit within the realm of England, as well as Englishmen, because, says that great lawyer, they were under one allegiance, due to one sovereign." It was determined in the same case, that the ante-nati in Scotland; that is, persons born there before the accession of king James the first to the crown of England, remained aliens as to the crown of England, because, as my lord Coke observes, "they were born when there were several kings of the several kingdoms, and the uniting of the kingdoms by descent subsequent, cannot make him a subject to that crown to which he was an alien at the time of his birth; so albeit, the kingdoms (England and Scotland) should by descent be divided and governed by several kings, yet it was resolved, that all those, that were born under one natural obedience, whilst the realms were united under one sovereign, should remain natural born subjects, and no aliens; for that naturalization due and vested by birth-right, cannot by any separation of the crowns afterwards, be taken away; nor be, that was by judgment of law a natural subject, at the time of his birth, become an alien by such matter ex post facto."

Whenever therefore, a kingdom, commonwealth, or an empire, comes to be divided into two, or more separate and independent states (whether the separation be made by the descent of the crown to different persons, or by a civil and public war, as in our case, is immaterial) I should apprehend the same law ought to obtain; for where there is the same reason, there the law should be the same. Wherefore, as both the British and Americans, born before the declaration of independence took place, were under one allegiance, due to the same sovereign, none of those can be considered as aliens, either in Great-Britain, or in this state, but may inherit within the several countries as the natural born subjects of both, and may sue in the respective courts of either, to recover their debts, lands and bene-

ments, if any of these should be unjustly withheld from them; but all born in any part of the dominions under the actual obedience of the British king, and all born in any of these United States, since that declaration, are aliens in the respective nations; the former are aliens in these states, the latter aliens in the British dominions.

If the foregoing authorities are rightly applied, if the principles I have laid down are just, and the inferences I have drawn from them conclusive, it follows, that upon common law principles, the property acquired by individual British subjects, born before the declaration of independence, cannot be forfeited as belonging to aliens, the persons born before that event not being aliens, as has been proved from the greatest law authority; that public British property, i. e. property belonging to the British crown, may, both by the common law, and law of nations, be confiscated; and that by the latter law (supposing all British subjects aliens) not only public property, but also the property of the criminal members of the British nation, may be confiscated.

Having examined into the natural justice, and legality of seizing, confiscating, and applying British property, I shall, in my next number, treat of the policy of confiscating, and applying that property; and I flatter myself, I shall be able to prove, that the confiscation and appropriation thereof would be bad policy.

January 28, 1780. A SENATOR.

CHARLES-TOWN, (South Carolina) November 17.

We have now here no less than seven of his Most Christian Majesty's ships, under the command of Mr. DuRomain, the gallant officer who lately with a very small force, and without loss, effected the conquest of the valuable island of St. Vincent; so that, should the enemy think proper to revisit us this winter, we shall have little to fear from them, only exerting our own strength and our neighbours doing their duty. His excellency count d'Estaing, commander in chief of the French naval and land force in America co-operating with the forces of the United States, having accomplished one of the purposes he came upon (which was, that if he should find it impracticable to recover the state of Georgia out of the enemy's hands, during the hurricane season, at least to leave us such aid as his next intended operations would admit, is gone upon another expedition, which occasions a variety of conjectures.

The Iphigenie frigate is returned from a cruise, having looked into Savannah river. In a day or two she is to sail upon another.

Last Monday assurances were received here of the pacific disposition of the Creek nation of Indians, with advice, that their headmen were going to meet the Spaniards at St. Mark's where barracks (bomb proof) capable of containing 3000 men, had been built; and that the Spaniards were in actual possession of Pensacola. One of the Indians who brought the intelligence declares, that he saw the British garrison marched out, and the Spanish centinels take post.

FISH-KILL, January 27.

We learn that captain Lockwood, last week, with a few continental troops, and some militia, made an excursion to Morrisania, ten miles from the city of New-York, and surprised and took twenty prisoners of Bearmore's corps, among whom was their new advanced partizan colonel Hatfield. They were in Mrs. Morris's house, and refused to surrender until it was set on fire; 'tis said the major and four others were consumed in the flames. We also learn that some of the militia, though ordered off by capt. Lockwood, were too tardy, and by their delay, about 40 of them were taken by the enemy's light-horse.

It is with pleasure we inform our readers, that our army, at head-quarters, are plentifully supplied with all kind of provisions.

PHILADELPHIA Jan. 29.

On the morning of the 15th inst. major Lee detached, from Burlington, 40 men, under the command of captain Patten, in sleighs, who, before next morning, were along-side the guardship, laying froze in the ice near Sandy-Hook; but finding that the ice for several yards round her, was cut, so that they could not board her, they retired to a small distance unperceived, where they surprised two schooners and 1 sloop, made the men prisoners, burnt the vessels, and then returned without the least loss, bringing with them the prisoners, and what plunder they thought proper.

Feb. 2. By various accounts from Charles-Town, we hear that the Spaniards have invested St. Augustine; that general Prevost, with his whole army, had left Georgia, to aid that place, but his assistance came too late; that Pensacola had submitted to the Spanish arms: and that the winter had been so severe in South Carolina, that there had been ice near an inch thick.

ANNAPOLIS, February 11.

By his EXCELLENCY THOMAS SIM LEE, Esquire, GOVERNOR OF MARYLAND.

A PROCLAMATION.

WHEREAS the house of senate stands adjourned to the twenty-ninth day of March next, and the house of delegates to the first day of the same month, and affairs of importance requiring the consideration of the general assembly as soon as well may be; I have thought proper, that the general assembly of this state should meet on the second day of March next, and do therefore, in virtue of the power with which I am invested by the constitution and form of government, hereby appoint the said second day of March for the meeting and holding the general assembly, of which the several sheriffs of this state are hereby enjoined to give public and due notice.

Given at Annapolis, this third day of February, in the year of our lord one thousand seven hundred and eighty.

T H O. S I M L E E.

By his EXCELLENCY's command,

T. JOHNSON, junior, sec.

G O D S A V E T H E S T A T E.

On the 27th ult. Congress resolved, "That all issues of articles in the department of commissary-general of issues, made in pursuance of a resolution of congress, of the second of October, 1777, be discontinued."

A memorial having been read in congress, from lieutenant Christopher Hele, of the British navy, praying to be exchanged, and to have leave to go to New-York, upon his parole, for a few days, to procure a person in his room, that assembly resolved, "that Mr. Hele be informed, that the prayer of his memorial cannot be granted until captain Cunningham is released; as it has been determined that he must abide the fate of that officer."

Owing to the destruction of the printing-office by fire, on the morning of the 4th instant, the printers were prevented from publishing a paper on that day. They return their sincere thanks to their fellow-citizens for their assistance on that unhappy occasion, and in a particular manner to those, whose exertions preserved their goods, and rescued their dwelling house from the flames.

ALL persons having any demands against me as deputy quarter-master-general, either for monies due or that will become due by the first of March, are requested to send in their accounts with all possible dispatch, in order for settlement; on receipt of which, the balances will either be paid or certificates given for what shall appear to be due to the first of March, to which time I am directed by the quarter-master-general to furnish all accounts in my district without fail.

H. H. PARSONS WORTH, D. Q. M. G. E. shore, St. Maryland.

TAKEN from on board a pilot boat, which drove on shore on the 23d day of December, between Little and Great Choprank, sundry articles, as sails, cordage, butter, &c. with a chest some distance from her, having in it mens and womens apparel; the chief of her lading is tobacco, which cannot be saved. The owner or owners of said boat are desired to come and prove their property, and pay the subscribers salvage agreeable to law and custom in such cases.

THOMAS LINTHICUM, ABRAHAM LEE, JOHN LEE

TAKEN up as a stray by Joseph Wilson, living near the court-house in Montgomery county, Maryland; a small bay MARE, about twelve and a half hands high, ten or eleven years old, branded on the off buttock something like 78, had a bell on her, and was shod before when she came. The said mare was sold by the subscriber in March, 1778, to a certain Charles Pritchett, who has since swapt her away. The owner is desired to prove property, pay charges, and take her away.

JOSEPH WILSON.

NOTICE is hereby given, that by an act of assembly made and passed at a session of assembly of the state of Maryland, begun and held at the city of Annapolis, on the 8th day of November, 1779, the bills of credit, dated January 1, 1767, emitted and made current by an act of assembly, passed November session, 1766, are directed to be brought in and deposited with the western shore treasurer, on or before the first of June next, or thereafter irredeemable; for which the holders of said bills of credit may, at their option, receive either bills of exchange drawn on the trustees of said state at London, or state loan-office certificates, bearing an annual interest of six per cent. But if the bills of exchange, or any of them, to be drawn in virtue of said act, shall not be paid, the same shall be renewable, but neither the drawer, or any endorser thereof, shall be answerable for, or liable to pay, any damages thereon, other than the charges of protest.

N. B. The printers in the adjacent states are requested to insert the above in their respective papers.

ONE HUNDRED DOLLARS REWARD.

January 6, 1780. RAN away from the subscriber's plantation, about seven miles from Annapolis, on the main road leading from thence to Baltimore, on Monday the 21st day of December last, a likely young NEGRO man, named TOM, about five feet eight inches high, a stout well set fellow with thick lips, and his legs rather large: had on when he went away, a light coloured country made cloth jacket, with a red short waistcoat under it; a pair of light coloured country cloth breeches, and also took with him a pair of leather breeches, dark coloured yarn stockings, and two pair of shoes. It is apprehended that he may have endeavoured to get over into Virginia, from whence he was brought when a small boy and was then the property of John Morton Jordan, Esq; deceased. Whoever will apprehend the said negro, and bring him to the subscriber, shall receive the above reward if taken in Maryland, and if out of Maryland a further reward of one hundred dollars, besides all reasonable charges, paid by

ELIZABETH SCOTT.

FIFTY POUNDS REWARD.

Head of Severn, Jan. 17, 1780. STOLEN from the subscriber, on Thursday morning the 13th instant, a coat, jacket and breeches, a pair of mittens, a comb, an ax, some powder in an oinabrig bag, and shot in a leather one. They were stolen by one PATRICK RILEY, an Irishman, about 3 feet 10 inches high, has yellow hair, a dark brown country cloth coat and breeches, and a whitish jacket, the breeches have a hole torn in the thigh; he has a call in his eyes, a full red face, and very large limbs. He has a pair, which mentions his having had one from the governor of Virginia, which he lost, and that he is a deserter from the British army; he had with him a white bitch, with yellow spots, short ears and tail. Whoever will secure the said Riley to that he be brought to justice, shall receive one hundred dollars if taken in the county, and if out of the county the above reward, paid by

JOHN M'COY.

A PETITION will be offered to the first session of the general assembly after this notice shall have been published eight weeks; for an act admitting to record, and giving effect from the date to a deed executed in Prince-George's county, by George Conn to Josias Shaw, for part of a tract of land called William and Anne.

RICHARD HENDERSON.

A PETITION will be offered to the first session of the general assembly after this notice shall have been published eight weeks, for an act admitting to record and giving effect from the date to a deed executed in Prince-George's county, by Mary Athey to John Webster, for part of a tract of land called Athey's Choice.

JOHN WEBSTER.

In COUNCIL, Annapolis, Dec. 17, 1779. ANY gentlemen having vessels to let on a freight to Europe or the West-Indies, and willing to treat with the Governor and Council, are requested to transmit their proposals as speedily as convenient.

T. I. JOHNSON, jun. cl.

CASH given for clean Linen and Cotton RAGS.

[XXXVth Year] M A

For the MARY

T may enterpri their p The re believe their purpose, and r lier exertions. It ma ertions for the estab of America. These formerly, have been ourselves that the w enemy are discour that it is not in thei negotiation will be peace infallibly con Our enemies, or sanguine; or, if t they expect it to be independence. Th than they have be their prospect of a continent. This is in which, though t to be inserted, yet ple evaporates free judgment of the t hopes or fears, the their thoughts of p war, as it is conve paragraph from a 1779, is as follow "The powers f not opposed them in the war in wh our rebellious co cause our sollicitat nor so pressing as ing to our streng from Germany, w the rebellion, and pent of her perf have made but G General, to Russi been only during cided contest of c dies, and the inen nel, that it has ap is not so respecta its usual superior: that are making b are building in purchased from other powers, th in a short time, have believed th could have fitted period of a few the petulance o sufficient apolo the marine, in l expence of a g perhaps might after all, affor The vague notic of Europe with America, and t nived at the pol proceedings. To their regard than to the mo have been neu more by her than by her a this present tim to every court executing the r half of this ista last, nor will t France has bee ing twenty m the war, to States General to stand out a will furnish the of troops, and pain will op and bring abou A paragraph ceived by the lows: "The the congress.

MARYLAND GAZETTE.

F R I D A Y, FEBRUARY 18, 1780.

For the MARYLAND GAZETTE.

It may be a just remark, that more enterprizes perish in the last stage of their progress, than in any other. The reason is, that men too soon believe themselves to have attained their purpose, and remit the vigour of their exertions. It may be the case with us in our exertions for the establishment of the independence of America. These are more remiss than they formerly have been, because we have flattered ourselves that the work is completed; that the enemy are discouraged, having become sensible that it is not in their power to reduce us; that a negotiation will be set on foot this winter, and peace infallibly concluded before the spring.

Our enemies, on the other hand, are not so sanguine; or, if they look for a peace at all, they expect it to begin with the relinquishing our independence. Their hopes are now higher than they have been for some time, both from their prospect of affairs in Europe, and on this continent. This is evident from their gazettes, in which, though the minister causes many things to be inserted, yet in these, the spirit of the people evaporates freely, and we can form a good judgment of the temper of the nation, their hopes or fears, their confidence or despondency, their thoughts of peace or resolution to continue war, as it is conveyed through this channel. A paragraph from a London paper of October 27, 1779, is as follows:

"The powers friendly to this kingdom have not opposed themselves to the house of Bourbon in the war in which she has taken part with our rebellious colonies, and the reason is, because our solicitations have not been so frequent nor so pressing as they might have been. Trusting to our strength solely, and to the recruits from Germany, we had hoped to have crushed the rebellion, and to have brought France to repent of her perfidiousness; hence it is that we have made but slight applications to the States General, to Russia, and to other powers. It has been only during this summer, since the undecided contest of count d'Estaing in the West-Indies, and the inequality of the fleets in the channel, that it has appeared, that our maritime force is not so respectable as to awe our enemies with its usual superiority; but which, from the efforts that are making by lord Sandwich, the vessels that are building in the docks, those that are to be purchased from the states of Holland, and from other powers, there is reason to believe, we will, in a short time, be able to do. No one would have believed that France, in her exhausted state, could have fitted out a fleet so numerous in the period of a few years; and this, notwithstanding the petulance of those in opposition, must be a sufficient apology for the officer at the head of the marine, in hesitating to put the nation to the expence of a greater naval armament, which perhaps might not have proved necessary. But after all, affairs are far from being desperate. The vague notion has prevailed, that the powers of Europe wish well to the independence of America, and that for this reason they have conived at the policy of France and Spain in their proceedings. This is a mistake; it is less owing to their regard to the independence of America, than to the money of France, that these powers have been neutral so long. France has done more by her money, for half a century past, than by her arms. It is well known, that at this present time, her money has found its way to every court, and has kept them back from executing the real purpose of their hearts, in behalf of this island. This money cannot always last, nor will these powers always stand out; France has been under the necessity of borrowing twenty millions since the commencement of the war, to lend it to the Americans. The States General and the emperors of Russia, not able to stand out any longer, against express treaty, will furnish the stipulated vessels and the number of troops, and it is to be hoped the next campaign will open with every prospect of success, and bring about a speedy termination of the war."

A paragraph in a paper of November 18, received by the way of the West-Indies, is as follows: "The French king begins to grow sick of the congress. He is now, as his countrymen say,

in *malade* in these politics; it is to be hoped it will cure him of that Don Quixotism so natural to rude ages and young minds, of setting nations free. Feeble as the countenance and protection of this monarch may be, it is from thence the rebellion derives its chief strength, and if this can be drawn off by the interposition of other powers, the independence of America will soon become *dependance*, and so many of the American heroes become *dependent*, that our "yonder mountains" there will not be bougls sufficient from which they shall be *suspendent*."

It is pleasant enough to see these effusions of barbarism and malignity, especially when we know that they are harmless. But, without doubt, the king of England will leave no stone unturned to excite the powers of Europe against our ally, nor do we know what money and intrigue may be able to produce. It is the general advantage of these powers to establish our independence, but by cession of territories, in Europe, in the Indies, in Africa, and in America, we cannot tell what Britain may be able to accomplish. Mankind are more moved by present profit, than by remote, though great advantages. Whether the island of Great-Britain may be able to augment her marine proportionably to the exertions which, on her part, will be necessary, if she perseveres in her diabolical intention of cutting the throats of the people of this country, I cannot tell. But be these things as they may, it is our business, to consider what may happen, and not to remit our exertions, because we have contended five campaigns, and are not yet subdued.

Equal encouragement appears to be taken by the enemy from the situation of our affairs on the continent, as is evident from a paragraph in the Whitehall gazette, so late as the ad of November last, which is as follows:

"The rebellion in America perishes every day. Like a kite it has been supported with paper wings, but these have become too cumbersome, and the construction will soon drop. The army of the rebels, from the expiring of their temporary enlistments, and famine, and nakedness, and other causes, is reduced to 5000 men: their councils are degenerated, the militia is wholly neglected, the people having become tired of twirling about a rusty firelock. They have chased Monsieur Gerard from Philadelphia, and the new minister, the chevalier de la Luzerne, has been obliged to take up his residence at Boston; the bulk of the Americans cannot bear the alliance; and it is certain that they will in a short time, intrust the congress to break it off. All these circumstances promise a happy event to a new campaign, by which these deluded people will at length be brought to listen to reason."

That our councils are, in some degree, degenerated, is not impossible, if we consider that the first men have been called off to fill the executive branches of their respective governments; and that others, pursuing their own opinions in preference to that of the public, have become obnoxious. That our militia is neglected is also certain, and the observation of our enemies ought to be to us a memento of our duty. There is scarcely a firelock listed, nor are muster days attended to, from one end of the continent to the other. Where is that ardour for arms, that industry to be expert in the manual exercise and the field manœuvres, which distinguished us at the beginning of the contest? It has departed, and has left nothing but the shadow of party politics and contention in its place. Does it not become the people of these states to emerge from these delinquencies, and to redress their evils? Let us begin at the source, not by reproaching public bodies, but by delegating the wisest and most capable men to serve us. We lay our hands across our breasts, and talk of peace, when verily there is no peace. At any rate it is the readiest way to obtain peace, to be prepared for war.

P A L I N U R U S.

* An expression of H. Laurens to governor Johnston.

To the PUBLIC.

THE policy, the delegates allege, depends on opinion; true, but if the opinion of the badness of the policy be founded on conclusive reasons, it must be admitted, that to confiscate

British property, in the manner they propose, must be *bad* policy. Whether this is really the case or not, will best appear from an examination of their reasons, in answer to that part of the senate's message which applies more particularly to the policy of the measure.

It is impolitic, say the delegates, to load their constituents with taxes, which they cannot raise without selling their property, and they think sound policy dictates the propriety of first selling that of their enemies. What, if the sale cannot be supported by the law of nations, the approved practice of the wisest and most civilized, and should, in the way proposed by the house of delegates, be contrary to our bill of rights, and the principles of the common law, would it then be good policy? May not this very measure heap heavier burthens on their constituents, if they should be taxed hereafter to repay the value of the property confiscated and applied? "But when once confiscated and applied, it cannot be restored." If a restitution of the identical property should be impossible, yet the value of it, I presume, may be paid to the present, or as they stile them, *original* owners; and this value must come out of the pockets of the people. The supposition is by no means inadmissible, even its probability, I think, may be supported by good reasons, and if so, the string of questions which immediately follow in their message, is as little to the purpose, as the song of Chevy Chase. That the other states have not confiscated *British* property, has been noticed in my first number, and that they confiscated the property of refugees to prevent its restitution, and not as a punishment for their treason, or enmity to their country, manifested by some unequivocal overt act, those states, I fancy, value their reputation too much, to admit. In opposition to the remark, "that want of resolution implies weakness, and from this timidity and half-way temper of our councils, the enemy may be encouraged to persevere longer than they otherwise would," I shall cite the sentiment of a judicious Roman, full as pertinent as the remark just quoted, "that counsels which at first view may appear crafty, or bold, are often difficult in the execution, and disastrous in the end." However, what is thought by one branch of the legislature to be an adherence to the principles of law, and of our constitution, should not be termed by the other *timidity*, although the opinion may be erroneous and too slightly taken up; if it be timidity, it is timidity on the right side, and no man, or body of men, need to blush at being stigmatized as timid, or fearful of doing wrong. But this timidity of the senate, from whatever motive it may have proceeded, is to have two surprising effects; it will encourage the enemy to persevere, and remind them of making that preliminary, which might otherwise have escaped their notice. Here I do not know which to admire most, the very great penetration of the delegates, in making these wonderful discoveries, or the supposed forgetfulness of the enemy. They must indeed have very bad memories, to have forgot in so short a time, the solemn declaration of their last commissioners on this very subject. "If the property intended to be confiscated were to remain unalienated, and the bare suggestion might secure it to the (I presume I venture here to call them *present*, and not *original*) owners; it is possible (say the delegates) that the British court, to save appearances, might mention the matter; but when this property is applied and gone, that court will be entirely silent about it; having lost thirteen colonies, and the *crowns* lands, it will not contend for an indemnification to retainers, and the disaffected from these states." To get rid of their importunity will be one inducement to that government for insisting on an article in the treaty of peace in their favour, and to hold out an encouragement to their partizans in any future revolution among their remaining colonies, will be another; France and Spain may not think the article quite so unreasonable as it appears to the delegates; nay, those powers may be well enough inclined to it, from one of the motives just mentioned; and it is presumed, France and Spain will have full as great a share in making a peace, as these states; even the latter would not act wisely in delaying that happy event, though only for six months, by objecting to such an arti-

ele, for the damages and expences of the war, during that time, might amount to more than all the property meant to be confiscated is worth. But Great-Britain having lost so much, the British government will be indifferent to the sufferings of those whose property has been confiscated; rather than continue the war, the British ministers might, I allow, abandon those wretches as a sacrifice to sad necessity, but if, by insisting strenuously on an article in their favour, they might reasonably hope to obtain it, national reputation, gratitude, and policy, will strongly impel them to contend, with the utmost decision, for a full indemnification, at least, of those sufferers, if not for an actual restitution of the property confiscated; the reasons assigned prove the probability of obtaining such an indemnification.

The delegates observe, "we have a right to be indemnified for the expences of the war, and devastation of our country;" granted, but does it follow that no other indemnification can be procured, but what is to accrue from the confiscation of British property? May not cessions be made in a treaty of peace of particular territories? May not Canada, for instance, as now claimed by Great-Britain, be reduced to narrower limits, and some peculiar commercial privileges granted to the United States? Nay, may not a sum of money be stipulated to be paid, as a compensation for those devastations which have been committed contrary to the rules of war? The supposition is neither improbable or unprecedented. The enemy, it seems, will not expect a restitution of the property of their subjects, or the value of it; "Shall that property therefore, exclaim the delegates, be given up, or we be taxed for the full value of it?" It has been observed, that the property of many, confessedly our own subjects, was reached by the bill, and meant to be confiscated without trial, contrary to our bill of rights, and also the property of many others, on the supposition of their being aliens, who really are not aliens, as I have endeavoured to prove in my first number. Debts due to British subjects were not reached by the bill, and why should lands, and other personal property, be made liable to confiscation? If a reparation of damages is the ground of confiscation in the one case, why not in the other? The damages done to, and expences incurred by us, will certainly swallow up both species of property. It has been proved, that by the law of nations, the property of unoffending British subjects ought not to be confiscated; but what of right ought not to be done, though we have the power, we should not do, and therefore, the property, if confiscated, of such British subjects, or the value of it, so far from being withheld from them, should not have been taken away. "We have earned, continue the delegates, this property (British) with our swords, and will keep it, to give this lesson to the world, that the enemies of liberty have not shared equally with its friends and supporters." If the world would not ascribe the keeping of this property to any other motive, than the desire of leaving it to useful a lesson, I should have no objection to the moral, abstractedly considered; but different motives for our conduct may perhaps occur to others, and, I fear, the most honourable will not be imputed to us. "We hold, say they in another place, our own, and British property within our state, by our swords, the title to both is the same." By repeating the sentiment, I conjecture, they thought it brilliant, however, its false brilliancy has betrayed them in this instance into some little inconsistency. If our resistance was lawful, and the war on our side just, the title to both properties is not the same; to some kinds of British property, I have endeavoured to prove, we have no title at all, and to our own, though we may not have a more secure, surely we have a juster title than mere force.

One great objection started by the senate to the confiscation and proposed hasty sale of part of this British property, at so inclement a season of the year, was, that few would probably attend the sales, and that engrossers and speculators becoming the purchasers, would turn into a private job, what might have been intended for a public benefit. That the purchasers would have consisted chiefly, if not altogether, of engrossers and speculators, I am induced to think from these two circumstances, they have the most money, and could not speculate to so great an advantage in any thing else, as in buying up confiscated property, at a quarter part perhaps of its real value. For the full information of the public, it is necessary to dwell a little upon this subject. Suppose the bill for the confiscation of what was termed British property, had passed towards the close of the last session; it could not pass till late in December, because it was withheld by the house of delegates, for reasons best known to themselves, from the senate, until the 15th of that month; the delegates inform us,

they had proposed to sell as much of that property as would have raised 5,220,000 dollars, and to have made the first payment by the first of next February; then, as much of that property as would have raised that sum, must have been advertised and sold in the space of one month, generally the most inclement in the year; a few only could have had notice of the sales, and few consequently (however great the number of persons inclined to purchase might have been) could have attended them, and become purchasers. It is probable, that twenty or thirty persons, at the outside, would have been bidders; might they not have previously agreed upon their respective portions of the property put up to sale, to avoid a competition of purchase and over bidding on each other? Although none of the delegates may have had such a scheme in view, whatever confidence they might thereby have shown of our success, yet the supposition, as to others, not members of our legislature, is not only possible, but probable. Then a given quantity of British property, which under more favourable circumstances would have commanded 20,380,000 dollars, for instance, would not have sold for more than 5,220,000 dollars; even the whole of this sum was not to have been paid down at once, but the payments were to have been made at different periods, as far as can be collected from some obscure intimations in the messages of the delegates to the senate, for their entire plan has been withheld from the knowledge of that branch. Whether personal property was intended to have been sold first, or both kinds, real, and personal, and what time was to have been allowed for the payment to have been made in, does not appear. Indeed, to judge from a part of the reasoning in the last message of the delegates, it should seem that they themselves had not very clear and distinct ideas of the proposed transaction; perhaps obscurity was affected. Speaking to the objection of the senate to the hasty sale of what they call British property, they observe, "the senate has thrown them into a dilemma; if we dispose of the property immediately, it is too soon, if not immediately, it is not soon enough; the sale of the property in question will not be affected by the depreciation of the currency, if it should depreciate still more, the property will command the more."

The reasoning of the senate on this point is so clear, that I wonder it should be misconceived by the delegates; was it misunderstood in order to be misrepresented? The objections of the senate to the hastiness of the sale, have been already explained; their objection to the terms of payment, I conceive, to be this. Suppose an engrosser or speculator had purchased an estate belonging to a British subject, in reality worth 60,000 pounds currency, for 15,000 pounds, owing to the want of competition, from the hastiness of the sale, and to the other causes just above mentioned. If this speculator is to be indulged with twelve months, for example, to make his last and perhaps principal payment on the 15,000 pounds, the money may in the mean time so depreciate, as not to be worth one half of what it was worth at the time of the contract; it is evident, if this should be the case, that the estate in question, sold this January, would not command more money a year hence; the contract being perfected by the last payment, and no greater sum being originally stipulated to be paid than the £ 15,000. The senate has suggested, and the suggestion is not improbable, that the arts of the purchasers would be exerted to depreciate the money, in the intervals between the times of making the contract and of payment. It would be the interest of the purchasers to have the money depreciate, and therefore it is probable they would wish and endeavour to depreciate it; whether they would succeed in their attempt, is another question; surely they would not pretend to any merit from their failing in the attempt. I have carefully perused the message of the senate, and have not discovered that "they are willing to hold out that the money will depreciate," they speak conditionally, if it should depreciate such will be the consequence. Neither has the senate "seemed to suppose," that the purchase would, in their estimation be invidious, but that in the opinion of some, who might otherwise have been willing to have purchased, it might be thought so, and that that circumstance might contribute to lessen the number of purchasers. If the legislature has not a right, upon common law principles, or by the law of nations, to confiscate all other British property indiscriminately (debts excepted), if it has not a right to confiscate the property of absentees, under the pretext of its being British, and the property of both should be confiscated, the validity of the title of the purchasers may be doubted, although we should establish our independence. There is indeed the strongest probability that Great-Britain will be obliged to acknowledge our independence, yet considering the vicissitude

of all human affairs, more especially in war, no man, I believe, will be found so presumptuous as to place that event beyond the reach even of adverse fortune. To use power and victory with moderation, is the token of a great and noble mind; whole nations, as well as individuals, are susceptible of this elevation of sentiment, and the nation, whose striking characteristic it was, while acting upon that principle, was invincible. If we should not by magnanimity, be induced to act with moderation, while prosperous, prudence at least, should incline us not to exceed the liberties of hostility; "for (as Pufendorf observes) the uncertainties and turns of fortune which may happen in war, ought to persuade men to be very temperate in the use of those liberties, for fear an alteration in affairs should, as it were, make their own weapons recoil, and return upon themselves the usage they gave others; and a man should be cautious that he don't set an example to others, that one time or other may be of dangerous consequence to himself."

It is somewhat strange, that the delegates, in some parts of their message, seem to have no other idea of right but what is founded on force, although mere force, unjustly exercised, can convey no right at all. There is nothing in the proceedings of the senate, which have come to my knowledge, to justify the assertion, "that they seem to entertain some doubts of the success of our arms;" indeed their message is full of confidence, founded, I hope, on a knowledge of the resources of this country, and a belief, that they will be called forth when necessary, and used with judgment and fidelity, and not be converted to private purposes; such an opinion surely would give them much greater encouragement, than any they could possibly receive from the interested willingness of engrossers and speculators, to realise, at an exorbitant profit, though with some little hazard, their ill-gotten pelf. Neither branch of the legislature, it is presumed, wants such encouragement as this, though the message of the delegates, which in this part of it has the appearance of a laboured apology for engrossers and speculators, insinuates as much against the senate. Should the legislature be disposed to resume the property so purchased by engrossers and speculators, the violation of public faith, the injustice done to men, who confiding in that faith had invested their money in the lands about to be resumed, would be founded in our ears by them and their advocates. Even to engrossers and speculators the legislature ought to do justice, and as they would have a just claim to be repaid the monies they had laid out in such purchases, those sums, or an equivalent for them, should be refunded in case of a resumption. Thus, although they might not, in the case put, make a profit, they would suffer no loss. But if the property in question should be confiscated, and once disposed of, is a resumption of it by our legislature certain, or even probable, though it should be evident that the public had parted with that property greatly under value? Mean conveyances of parts of it would probably be made, before the intention of resuming it would be known, or the resumption could take place; it would be extremely difficult in either case, and unjust in the former, to unravel and set aside the intermediate sales. That the engrossers and speculators would sell out again a part of their purchases, is probable, unless more effectual means should be taken hereafter, if the property in question should be confiscated, to make them pay the full value thereof, than would have been taken by the delegates at the last session, had it not been for the interposition of the senate. For if British property, improperly so called, had been confiscated, and put up to sale under the unfavourable circumstances already mentioned, there can be no doubt but what it would have sold much under its value, and little, but that the original purchasers by selling, perhaps, a twentieth part of their purchases, might have replaced in their own pockets the whole of the money paid to the public; and thus the money, "the means of speculation, would not have been drawn (as the message supposes) out of the hands of engrossers and speculators." View therefore the projected sales which way we please, the public would have reaped very little advantage from them; engrossers and speculators, at the worst, would only not have made a profit, but might, if not strip of their purchases, have acquired great fortunes for small considerations. The message attempts to draw an argument in favour of an immediate sale of the property intended to be confiscated, from the possibility of the currency depreciating still more, but this argument the delegates have answered in another part of their message; if the bills of credit should continue to depreciate, less property will command the more of them, as they justly observe, though they apply the observation very improperly, as has been noticed.

Individuals should be... when they ma... themselves strictly to th... as not scrupulously at... then they asserted, that... a greatly apprehensive... currency continue... This part... several others, has be... message alluded to is an... former message from... they say, the enemy's l... on a failure of our... their own opinion, th... only means we have... to this the senate r... wa should a public b... probably be disappoint... many other instances;... peculiar force, and im... what is charged upo... rehenion of some ba... vent, but not so had a... on the war; in fu... lege, that money, ef... the news of war, b... officers, the necessari... vere all, the virtus of... authority of Machiave... second book of ditcou... and the experie... ant repelled the inv... ulent and powerful... poor, maintained thei... of Austria, through... struggle and contest, ... ted, the later part... sive, and in defens... aged, money, at lea... necessary as in offen... of courie expensive... undertaken. Admit... to nothing, does it fo... all resources? Weu... sink with that cu... and silver among us... could be small, thi... more valuable, an... and the more of ev... tion, in kind, woul... be deficiency of foli... and Spain assist us w... trest of those powe... under the British yo... reasonably presume... oney, and with th... necessary. We have... aid from France, ... proportion to our... ought not to rely... must make the g... lief, for these ver... additional induceme... e have resources, ... the breach of ou... on law, if we will... em have been men... nds, next to taxed... the greatest of a... securing money, r... But the sale of t... cannot be made, u... ate, because if t... ought not to be e... with any principle... the senate, which w... more properly th... nds, particularly, ... tes assert, to the... office for the Briti... e senate to the co... ema to exten: n... rty; they do no... e law of nations, ... e have examined... the doubt, whether... w, the 'declaratio... ch a retrospective... ate all British pro... tedently to it... ate, that some kir... rty may be co... ubt whether all... ee, is vested in i... ndence, and thi... rty acquired... e property: the... efore, to be c... it, public British... opinion of the... If the principle... ate, and the rea... doubt can rem... onging to, or v... ng, as the repre...

Individuals should take care, especially public
dia, when they make assertions, to confine
themselves strictly to the truth. This precaution
was not scrupulously attended to by the delegates
when they asserted, that "the senate admit they are
greatly apprehensive of the consequences, should our
paper currency continue to depreciate, and come to
nothing." This part of the senate's message, as
several others, has been misrepresented. The
message alluded to is an answer to an assertion in
former message from the delegates, wherein
they say, the enemy's hopes of success are found-
ed on a failure of our public credit, subjoining,
"on their own opinion, that our paper currency is
the only means we have of carrying on the war."
To this the senate reply, the enemy's hopes,
should a public bankruptcy happen, would
probably be disappointed, as they have been in
many other instances; the word *even* has here a
peculiar force, and implies directly the contrary
of what is charged upon the senate, viz. an ap-
prehension of some bad consequences from that
event, but not so bad as to disable us from carry-
ing on the war. In support of this opinion they
allege, that money, especially paper money, is not
the sinews of war, but good soldiers and good
officers, the necessaries of life, numbers, and above
all, the virtue of the people; they have the
authority of Machiavel (see the 10th chap. of his
second book of discourses on Livy) for this op-
inion, and the experience of past ages. The Gre-
cians repelled the invasions of the Persians, an
valiant and powerful people; the Swiss, though
poor, maintained their liberties against the house
of Austria, through an almost uninterrupted
struggle and contest, for several centuries; they
defied, the latter particularly, mostly on the de-
fensive, and in defensive wars, if judiciously man-
aged, money, at least so much of it, is not so
necessary as in offensive wars, in which distant,
and costly expeditions are commonly
undertaken. Admit our currency should come
to nothing, does it follow we should be destitute
of all resources? Would the virtue too of our peo-
ple sink with that currency? Have we no gold
and silver among us? Though the quantity
could be small, this very scarcity will make it
more valuable, and consequently it will com-
mand the more of every saleable article. Tax-
ation, in kind, would in a great degree supply
the deficiency of solid coin; would not France
and Spain assist us with a subsidy? It is not the
interest of those powers to suffer us to be reduced
under the British yoke, and therefore we may
reasonably presume, they would assist us with
money, and with their fleets and armies too, if
necessary. We have already derived considera-
ble aid from France, and might expect greater,
proportion to our difficulties and distress. Yet
we ought not to rely altogether on foreign aid,
we must make the greatest exertions for our own
relief, for these very exertions will be a strong
additional inducement to our ally to help us.
We have resources, without resorting to unjust
the breach of our constitution, and of com-
mon law, if we will call them forth: some of
them have been mentioned; the sale of the back
lands, next to taxes punctually and quickly levied,
the greatest of all our internal resources, for
securing money, remains to be considered.
But the sale of these lands, say the delegates,
cannot be made, upon the principles of the sen-
ate, because if their principles are just, they
ought not to be confiscated. I have not met
with any principle, or principles, laid down by
the senate, which would prevent the confiscation,
more properly the conquest, and sale of these
lands, particularly, if they belong, as the dele-
gates assert, to the king of Great-Britain, and
not to the British nation. The objection of
the senate to the confiscation of British property,
seems to extend no farther than to private prop-
erty; they do not positively assert, that even
public property may not, by the extreme rigour of
the law of nations, be confiscated. "As far as
we have examined, say they, into the subject,
we doubt, whether by a fair construction of that
law, the declaration of independence can have
such a retrospective operation, as to vest in this
state all British property, acquired by individuals,
precedently to it." Here, they seem to im-
pugn, that some kind even of private British prop-
erty may be confiscated; they express their
doubt whether all British property, within this
state, is vested in it, by the declaration of inde-
pendence, and this doubt is confined only to
private property; the plain and obvious inference
therefore, to be drawn from the sentence, is
that, public British property may be confiscated, in
the opinion of the senate.
If the principles herein before laid down be
just, and the reasoning upon them conclusive,
no doubt can remain, but that the back lands,
belonging to, or which did belong to the British
king, as the representative of the British nation,

may be confiscated by the law of nations; nor is
there any thing alleged, by the senate, contra-
dicting this conclusion. Upon the same princi-
ples, if they belong to the native Indians, and
they, being really aliens, have unjustly warred a-
gainst us, and those lands are not possessed by in-
dividuals among them, but held collectively by
the tribes, they may also be confiscated; if an
exclusive property, in some portions of the ter-
ritories in question, has taken place among them,
the individuals of those tribes, who by commit-
ting hostilities upon us, have incurred the guilt
of an unjust war, and made themselves criminal
members of their society, they too, as aliens, and
criminal members, may forfeit the lands held by
them, as private property. The United States,
by the right of conquest, upon the principles of
the common law, and the law of nations, would
acquire a just title to those lands, supposing them
to belong either to the king of Great-Britain, or
to the Indians collectively, or individually. But
should the congress adopt the reasoning of the
senate, the delegates shrewdly remark, it will not
be willing to confiscate the back lands, because
a restitution of them to the British crown, or an
equivalent, may be made a preliminary of the
peace; for if the restitution of the private prop-
erty of refugees, or British subjects, or the value
thereof, should be made a preliminary arti-
cle, the restitution, surely, of public property, in
which the whole British nation is interested, will
be made one. This argument, if it deserves the
name, has been already answered; a restitution
of this public property cannot be demanded, as
has been proved, by any right, arising out of the
law of nations; if a restoration of the conquered
country should be demanded upon any such prin-
ciple, the demand would not be complied with,
because the safety of these States, and the inter-
ests of both France and Spain, oppose the restitu-
tion, and therefore the full and entire title, or
right, to this public property, will be finally pass-
ed away from the British king, by the treaty of
peace, unto these United States. A restitution
of private property, or the full value of it, if
the owners should not chuse to reside in these
States, or the laws of any of them should exclude
the residence of particular obnoxious persons, is
not liable to the same difficulties and objections,
as has been already observed.
It is difficult to comprise within the limits of a
newspaper all that ought to be said on this sub-
ject; and although I have already exceeded those
limits, I must not omit one argument more a-
gainst the measure. The delegates contend, that
all British subjects became aliens, as to us, by the
declaration of independence; on this principle,
they originated the bill for seizing and confiscat-
ing British property, and on this they principally
reic its defence. Now, whether all British subjects
became aliens, or not, in this state, by that de-
claration, is, as I conceive, a point of law, tri-
able in our courts of law, and with the decision
of which, the legislature has nothing to do, un-
less going out of its province, it should assume a
judicial power; but in so doing, it would run
counter to the 6th article of our declaration of
rights, which provides, "that the legislative,
executive, and judicial powers of government,
ought to be for ever separate and distinct from
each other."
"In this distinct and separate existence of the
judicial power (judge Blackstone remarks) con-
sists one main preservative of the public liberty;
which cannot subsist long in any state, unless the
administration of common justice be in some de-
gree separated both from the legislative and also
from the executive power. Were it joined with
the legislative, the life, liberty, and property, of
the subject, would be in the hands of arbitrary
judges, whose decisions would be then regulated
only by their own opinions, and not by fundamental
principles of law; which, though legislators may
depart from, yet judges are bound to observe."
Whether there is force in the foregoing ob-
servations and reasoning, the public, to whom the
appeal is made, must determine; if it should de-
termine in favour of the senate, it must also de-
termine, that the fears and reasons of that branch
of our legislature are not groundless. And here
I would wish to conclude the investigation of a
subject in which the people of this state are deep-
ly interested, but I must trespass on their pa-
tience a little longer, while I examine the necessity
of seizing and confiscating what is called British
property, which seems to be relied on by the de-
legates, as a principal argument in support of
the measure.
Jan. 29, 1780. A SENATOR.

delegates, about the justice and the policy of
confiscating British property. I have seen the
messages, which passed between our two houses,
on that subject, and the resolves entered into
by the house of delegates, on the senate's nega-
tive to their bill. Any diversity of opinion be-
tween the two branches of the legislature, which
may prevent or retard the public business, create
animosity and rancour between the members, or
injure, in any degree, our common cause, must
give pain to every real friend to this state. We
are still involved in a war, on the success of
which our liberties, our property and our hap-
piness depend. Every cause of division there-
fore ought most carefully to be avoided, and
much have they to answer for, who are the au-
thors of it. I understand, both houses have
appealed to us their constituents, and the house
of delegates have earnestly requested our instruc-
tions, as to the propriety of the measure. I
cannot but remark, that it appears to me that
the people at large are very incompetent judges
of the subject. Very few of us can be supposed
to be acquainted with the laws or practices of na-
tions. The one branch alleges, "the confisca-
tion of British property (debts excepted) is justi-
fied by the immutable principles of justice, and
the law of nature and nations, and founded in
policy and necessity." The other denies "the
justice, the policy, or the necessity of the mea-
sure, and says it is contrary to the laws and
practice of the civilized nations of Europe." Both
sides have offered some reasons, and seem
equally positive and decided in their opinions. I
wish the house of delegates had not, by their
resolves, so severely censured the senate, and
pointed their anger at a few members of that
body. They seem to me to wish to draw the
public resentment on five gentlemen, because
they differ from them in opinion, on a political
question. For an error in judgment (if it was
one) they declare, "all consequences, which
may happen, from not complying with the re-
quisition of congress, ought to be imputed to
those members of the senate, who gave their ne-
gative to the bill;" and in their message they in-
sinuate, "that their conduct proceeded from a
partiality or affection to the old government, or
a desire to secure the estate of the late proprietary
from confiscation." It ought to be remembered,
that the senate is elected by the people. That
body was created by our constitution, to be a
check and controul to the house of delegates, to
correct their errors, and to prevent those popu-
lar passions, prejudices, and predilections, to
which every numerous body are liable. Their
duration affords stability, and the mode of their
election secures a choice of the most proper men
for their high and important station in our go-
vernment. The present members are gentlemen
of family, fortune, knowledge, experience, and
abilities. I confess the senate is my favourite
branch, and I am displeased at any thing
which may tend to lessen their weight and dig-
nity, or to injure their reputation and credit with
the people. They are really the first men in our
state. They are all equally engaged with us in
the war; their lives and fortunes depend on its
success. They cannot have a distinct and sepa-
rate interest from the people. They are connected
with us by the ties of blood, marriage, and friend-
ship. They are as deeply interested in the welfare
and happiness of this country, and have as much
at stake, as any other set of men in the state, and
bear with us their proportion of the burthens
of the war. I do not make these observations to
induce my countrymen to place an implicit op-
inion or confidence in that branch of the legisla-
ture, or to prevent the strictest examination into,
and discussion of their public conduct, but to
guard the people against improper and ill-
grounded jealousies and suspicions. I should not
have said thus much, if, some time past, asper-
sions had not been cast on some of the body, and
even doubts entertained of their whiggism and
attachment to our independency; and from a
fear that the late resolves of the delegates, and
the insinuations in their message, would give
countenance to the suspicion. If there are any
in the senate unworthy of the public confidence,
or whose political integrity may be justly suspect-
ed, I wish they were known; but till they are
pointed out, I will believe them all firm whigs,
and zealously attached to our liberties and inde-
pendence, and as such not only give them my
confidence but support.
I am one of those who do not see the justice of
seizing British property. I conceive the case to
be entirely new; that the laws or rules, or prac-
tice observed by independent nations when at
war, cannot apply to revolutions like the present,
and that our conduct ought to be governed only by
such principles as appear to us founded in justice
and equity. I apprehend the intended confisca-
tion will effect and take away the property
(which may be within this state) of two classes

For the MARYLAND GAZETTE.
THE publication in your last week's paper,
under the signature of a senator, has given
not only pleasure, but information to me, and
many of my neighbours. We have heard of the
difference, between the senate and the house of

of men, 1. Natives of Great-Britain or any of its dominions, other than the colonies (now United States) who never came into and joined us in the present war, or been employed in our service. 2. Natives, or inhabitants of this or any other of the states, who, since the commencement of hostilities by Great-Britain against us, joined the enemy, or withdrew from the continent, and went to Great-Britain, the latter of whom are commonly known by the name of American refugees. If we confiscate the property of the first class, without any discrimination, we shall certainly injure, in some cases ruin, many innocent people. Some who could never have offended us by word or deed, helpless women and harmless infants. Our friends in Great-Britain must also be involved in one common ruin, men who have openly asserted our cause, and justified our conduct. We shall by such indiscriminate seizure destroy the distinction between vice and virtue; we shall destroy all confidence, and make those who have been our advocates our bitter and inexorable enemies. I believe but few, who are really criminal in their conduct as to us, will be affected by the confiscation, in comparison with the great numbers, who are innocent and unoffending. Probably not one in an hundred. How can we reconcile the taking the property of Mr. Hanbury, Mr. Russell, Mr. Galsford, and other merchants, who hold lands and other property in this country. They have ever avowed themselves our friends. Many of us are under personal obligations to those gentlemen, and to injure them would be the basest ingratitude. Colonel Sharpe behaved well in his government, his faults were few, his virtues many; his conduct, at the time of the stamp-act, ought not to be forgot. He had a strong affection for this country, his desire was to breathe his last in it; peculiar circumstances called him to England, and he will probably return, unless prevented by our cruel and ungenerous treatment. Our late governor Eden was as much our friend as consistent with, or could be expected from his trust to the crown. He departed from this state with reluctance, and with the permission if not at the desire of the convention; and he never bore arms, or took any open active part against us, and he was of too noble, too generous a disposition, to injure us in private. The late proprietary (whose estate seems to be the great object of the advocates for the measure) is an infant. If we do not violently lay our hands on his revenue, manors, relieves, and ungranted lands, it is probable, after our independence is established, he will come and live among us, spend his income, and add to our numbers. The loss of his government he will not repine at, because necessary to support our liberties and our independence. There are many others, in the same situation with those I have mentioned, equally the objects of our attention, and whose property ought to be excepted. Indeed, if any confiscation takes place, I would have it confined to those particular members of the British nation, who, by their immediate and direct consent, have engaged in the war against us. I cordially assent to the position, "that the justice of the confiscation depends on a knowledge of the persons who will be affected by it."

As to the second class—I have as great a resentment against some of them, as any man in the state; but great difficulties will occur in drawing the line to distinguish the guilty from the innocent. Some of them ought to be considered as subjects of this state, and if they have taken up arms, or done any act declared treason by our act of assembly, they ought to be punished as traitors, but they are entitled to a legal trial. I cannot conceive how any man can be adjudged a subject of this state, before the declaration of independence, on the 4th of July, 1776. Before that day we were all subjects of the king of Great-Britain. In a civil war, no criminality ought to be imputed to any man who took part with either side. Humanity, policy dictates a strict observance of this rule. No man, therefore, who joined the enemy, or withdrew from this country, before the declaration of independence, can be considered as a traitor, or as a delinquent, or offender against this state; nay, I question whether, before the establishment of our new government, any one could be considered as guilty of treason, or any other offence against it. Can a person be guilty of treason against any state or government, before such state or government is formed or established? If any citizen of this state, after the 4th of July, 1776, took up arms against it, or if any citizen, after our act of assembly to punish treason, committed any act by that law declared treason,

such citizen ought to be tried and punished agreeable to the law of nations, or the act of assembly. I do not discover any great difficulty in ascertaining who are British subjects, but I think it almost impracticable to determine, who ought to be considered as subjects of this state. As for those absentees who retired or withdrew at any time, either before or after the declaration of independence, and who have not borne arms against us, it would be unjust and cruel to forfeit their property. It would favour too much of plunder and indiscriminate revenge. It would seem to proceed from private hatred to particular men. Was there any law, which declared their departure unlawful, and annexed a penalty? Was it criminal to leave a country involved in a war to avoid its calamities, and the consequences which might arise from their stay? If by their departure they infringed no law, upon what principles can the confiscation of their property be justified?

I think there is a manifest difference between seizing goods of an enemy, found on the high seas, or in their country, and their property in our power, within the state. I have ever understood it to be the practice of all nations at war, to capture vessels and their cargoes; in that case, the owner trusts his property, on the seas, with a knowledge of his risk, and a certainty of a loss if taken, but he may insure if he pleases. In the present case it was lawful for those, who are now become our enemies, to acquire property within the state, and when they obtained it they reposed a confidence in us, and relied on our implied faith for its protection and security. It may also be the practice of nations at war to seize goods in the enemies country, but in that case, such conduct may be expected from the usage, and there is no breach of faith.

I readily agree to the distinction between confiscating the lands, and the goods or other personal property possessed by British subjects in this state. I have never heard of an instance, and the advocates for the measure, I believe, cannot shew one, of a confiscation of immovable property, as land, possessed by the subjects of an enemy. No stronger argument need be adduced, than that such a seizure has never been made. The difference between confiscation and sequestration is obvious. The first takes away the whole property, the other only affects the income, or profits. To prevent a remittance of the income, may be proper to weaken the enemy.

I do not see that any great advantages will accrue to the public from the sale of British property. If we take only what belongs to individuals who have been criminal, it will be of little value, and not worthy the notice or time of our assembly. I believe there is no public property in this state belonging to the king or nation of Great-Britain. Indeed, if all the British property in this state is sold, and the amount carried into our treasury, I believe it will not be so considerable as expected, nor can it enable us to carry on the war, as the friends of the measure flatter themselves. There is no doubt, that engrossers and speculators will constitute the far greater part of the purchasers, as they alone are able to lay down great sums of money, and therefore, I should not wonder if they are warm advocates for a general confiscation. Those miscreants have almost ruined America, and now we are to realize their heaps of continental. I hope no suspicion justly lies against any of the public advocates for the late bill, that they or their connections intend to become large purchasers of the forfeited estates.

The people in this county appear very concerned about the question of confiscating British property. I do not believe any instructions will be given by them. Some few of those, who always love to fish in troubled waters, began to make a stir, but I am inclined to think the reasons urged by the Senator, his spirit and resolution in defending the conduct of the senate, will effectually silence any clamours against them in this county. The tribune leaders will find themselves unable to answer so able an adversary, and the people will leave such abstruse subjects to the discussion and determination of their legislature.

A PLEBEAN.
Prince-George's county, Feb. 16, 1780.

FISH-KILL February 3.
We learn that the enemy, in two divisions, have made an excursion into New-Jersey, and surprised our guards at Elizabeth-Town; where they burnt the meeting-house, school-house and gaol, and carried off several prisoners: at Newark,

they burnt the academy, and made prisoner Justice Kedden, and about twenty-five more.

PHILADELPHIA Feb. 3.

Extract of a letter from an officer in high command dated Charles-Town, Dec. 29, 1779.

"By the last accounts from Savannah, we learn that the enemy are quiet, and, for the sake of an airing, they have encamped their troops at several plantations, at the distance 10 miles round, the farthest from town are at Abercorn. They are sitting some transports in sea."

"Before this reaches you, you will doubtless hear, that the Spaniards have been up the Mississippi, and possessed themselves of the English settlements on that river, and that they made prisoners; that about the beginning of the month they left Havana with a respectable army with 4000 troops for Pensacola or St. Augustin perhaps both. This the enemy affect to believe, and are not reinforcing these posts; hourly expect the troops from New-York."

To be SOLD in the city of Annapolis, PURSUANT to an act to empower the governor and the council to sell the public property therein mentioned on Wednesday the 15th of March next.

THREE GALLIES, with their tackle, apparel, and furniture; a considerable quantity of naval and military stores; some saltpetre, horses, waggons, harness, and gun, and the interest of the state in the tax-yard in the city of Annapolis. Inventories of the particulars will be lodged at Mr. George Mann's tavern in Annapolis, and at the merchants' coffee house in Baltimore Town, by the first day of March.

In order of the council, PAID BY T. JOHNSON, jun. cl.

A PETITION will be offered to the session of the general assembly after notice shall have been published eight weeks, an act admitting to record, and giving effect from the date to a deed executed in Prince-George's county, by George Conn to John Shaw, for part of a tract of land called Wagon and Anne.

W 8 RICHARD HENDERSON.

A PETITION will be offered to the session of the general assembly after notice shall have been published eight weeks, an act admitting to record and giving effect from the date to a deed executed in Prince-George's county, by Mary Athey to John Webber, for part of a tract of land called Athey's Choice.

W 3 JOHN WEBSTER.

TAKEN from on board a pilot boat, which drove on shore on the 23d day of December, between Little and Great Chopank, dry articles, as sails, cordage, butter, &c. in a chest some distance from her, having in it men and womens apparel; the chief of her lading tobacco, which cannot be saved. The owners of said boat are desired to come and claim their property, and pay the subscribers for agreeable to law and custom in such cases.

W 2 THOMAS LINTHICUM, ABRAHAM LEE, JOHN LEE.

TAKEN up as a stray by Joseph Wilson, living near the court-house in Montgomery, Maryland, a small bay-MARE, about a half hands high, ten or eleven years old, branded on the off buttock something like a bell on her, and was shod before she came. The said mare was sold by the subscriber in March, 1778, to a certain Charles Pritchett, who has since swapt her away. The owner is desired to prove property, pay charges and take her away.

W 2 JOSEPH WILSON.

ALL persons having any demands against me as deputy quarter-master-general, for monies due or that will become due by the first of March, are requested to send in their counts with all possible dispatch, in order of settlement; on receipt of which, the balance will either be paid or certificates given for which shall appear to be due to the first of March, which time I am directed by the quarter-master-general to furnish all accounts in my power without fail.

W 2 H. HOLLINGSWORTH, D. M. G. E. shore, St. Mary's

[XXXVth Year.]
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MARYLAND GAZETTE.

F R I D A Y, FEBRUARY 25, 1780.

To the PUBLIC.

UNDER the pretence of necessity, the most unjustifiable actions have been committed; Milton calls it, "the tyrant's plea." That necessity has been often pleaded in free, as well as in absolute governments, to cover injustice, no man acquainted with history can deny. The safety of the people, is, no doubt, the supreme law; to that law every other consideration, except the observance of the natural, or divine law, must give way. When the safety of the state is in evident danger, what would otherwise be the greatest hardship, or even injustice, ceases to be so; but then this danger must be great and imminent, the necessity springing out of it must be palpable, and felt by every member of the community. Is the necessity urged by the delegates in support of the confiscation of British property of that nature? It surely is not, they themselves do not consider it as such, they speak of the sales of that property rather as a matter of fitness, propriety, or convenience, than of absolute necessity; they say, indeed, they cannot raise, by taxes, more than 9,000,000 out of the 14,220,000 dollars required by congress as the quota of this state for nine months, from the first of next February to the end of October. Whether more than 9,000,000 of dollars can be raised by taxes alone within the time limited, does not become an individual to determine, contrary to the assertion of the delegates, who ought to be best acquainted with the circumstances of the people, and consequently the best judges of what they can bear. That many objects of taxation have escaped their notice, is certain. The ordinary and marriage licences, and the fines and forfeitures, might, it is conceived, be increased, without over burthening the people, so as to produce annually a sum not much short of £.100,000. Duties might be laid on foreign luxuries and superfluities; these would probably be a very productive fund, considering the present turn for expensive extravagance; that they might operate as a discouragement to trade, we need not apprehend, the mischief, perhaps, would not be great, if they should check for a time, a trade which is deemed, by many good judges, to be prejudicial to the United States, in the way it is now carried on. Why should not the public debtors, who have paid off their loan-office bonds, give fresh bonds for the balances that may be justly due to the public, after deducting from the original sum, the payments made in a depreciated currency, and credited according to the prevailing rate of exchange at the times of the respective payments? There is due in the year 1773, to the public on bonds £.154,000 sterling; suppose £.100,000 sterling that sum discharged in the present circulating bills of credit, and reduced by the payments made and credited, as above mentioned, to £.80,000 sterling, add to this sum the £.54,000 supposed to be outstanding, the amount would be £.134,000, the annual interest, at 4 per cent. £.5360 sterling; if the obligors were constrained to discharge this interest at the present exchange, what a vast sum would thereby accrue to the public treasury! Even at £.1500 per cent. exchange it would produce £.20,400 currency. Particular interests, indeed, might, and probably would oppose this plan, but these could not come in competition with the public good, when that may be promoted without the least hardship to individuals, or violation of justice. If I am rightly informed, when it was stated at the last session in the house of delegates, to make the sterling quit-rents formerly due to the once lord proprietary, payable to the state, a member of that house contended for the propriety of their being discharged at a higher rate of exchange than 156 2/3 per cent. If such an advance on the exchange settled by law was esteemed just, in his opinion, and in reality would have been just, in the case of the quit-rents, (supposing them made a public revenue) that gentleman, certainly, could not consistently oppose an advance on the above sterling interest, due and payable to the state, nor do I conceive the house could oppose it on any rational principles. The ordinary and marriage licences, the duties on foreign luxuries, the fines and forfeitures, the interest accruing and paid, in the manner above

mentioned, on loan-office bonds, would altogether produce an income, it is apprehended, more than equal to the expence of our civil government, and in that case the whole of the net revenue arising from the assessments on real and personal property within the state, might be applied to the payment of our quota of the continental charges and demands. The delegates say, the 14,220,000 dollars required of this state, cannot be raised by taxes, without compelling the people to sell a part of their property; they admit then, that by selling some part of their property, the whole sum may be raised, but contend it is unreasonable to compel the people to part with their own, when there is property in our power belonging to our enemies, and which should be sold first. But then the question recurs, may not this way of proceeding, to avoid a temporary evil, supposing it justifiable by the law of nations, our municipal law, and the principles of our constitution, plunge our people into greater difficulties and distress hereafter? I think I have adduced very good reasons in support of the probability, at least, of this opinion. Admitting we cannot raise by taxes the 14,220,000, does it follow, or would the congress require, that this state should break through its declaration of rights, and violate the law of nations and our common law, in order to levy that sum? Taxation alone will not enable us to carry on the war; other resources must supply the deficiency of taxes; some of those resources have been pointed out. This state is equally entitled with any other state in the union to a share of the back lands, the want of money, and the little probability that four or five states claiming those lands exclusively of the rest, will reap any considerable advantage from their contested claim, as matters are now circumstanced, may procure for this state, that redress which it hath not been able yet to obtain from policy or justice. It is to little purpose to wreck our invention in finding out ways and means for filling the public treasury, if the utmost attention be not paid to proper savings in every department; without the strictest observance of the most rigid economy, the public treasury will resemble the tub of the Danaids, and the monies collected from the sweat and labour of the people, will flow out as fast as they are poured into it; nay, the public revenue will be constantly anticipated, even should the people be taxed to the very extent of what they can pay, after using the utmost industry and frugality; to tax up to that pitch would not be good policy, and to go a single iota beyond it would be unjust, and indeed impracticable. The legislature should set the example to others, and in these times of difficulty and extraordinary expenditures, endeavour to render their fittings as little burthensome as possible to the people. The business of the last session, which cost near £.60,000, might have been transacted in half the time, and consequently one half the expence saved. Why the session was unnecessarily protracted from the beginning of November to the end of December, the people have a right to know, and they would do well to enquire. The necessity urged by the delegates for the immediate sale of part of the British property intended to have been confiscated, arose, as they state it, from the requisition of congress to make the first payment on our quota by the first of February, and the shortness of time from the latter end of December to that day to make new assessments, and to give sufficient opportunity and notice to the people to prepare for the payment of their taxes; had the assessment bill been passed early in the session, and the fate of the confiscation bill previously decided, these stumbling blocks would not have lain in the way. The senate complaisantly remark, that they cannot suppose the alleged necessity was created on purpose to enforce the passage of the bill; to preserve harmony, if possible, between the two branches of the legislature, so conducive to the judicious management and dispatch of the public business, is both prudent and necessary, and probably induced the senate to put the most favourable construction on that delay. Individuals out of doors are not tied up to the same rules of order and decorum, they may plainly speak out their sentiments. But it is not my wish or intention to excite the resentment of the public

against any man, or set of men, were it even in my power; a cautious distrust however may be necessary; too much suspicion, and lightly entertained, has frequently occasioned, in free governments, turbulent and noxious factions, and too little may degenerate into such a confidence in the representatives, as to be abused. The extremes between an anxious and fretting jealousy, and a blind and implicit confidence, should be avoided; a free and discerning people, if they mean to remain free, will endeavour to preserve a middle conduct between those extremes; if they act prudently, they will not rely on mere and plausible professions, but they will search narrowly into the true and secret springs of the public councils, and not always content themselves with the ostensible and assigned motives for the conduct of their representatives. The good sense of our people, particular circumstances and particular characters, will generally furnish them with a clue to lead them through all the windings to the main and innermost spring of public measures. The delegates endeavour to cast the blame on the senate for not raising the whole sum demanded by congress; the reasons assigned by the senate in their message for not passing the bill for the confiscation of British property, and what has been suggested in the course of the present enquiry, will enable the public to form a pretty good judgment of the rectitude and policy of the motives which induced one branch of the legislature to urge, under all the enumerated disadvantages, the passage of the bill, and the other to reject it. The writer has no interest distinct from that of his country, the prosperity of which he has always endeavoured to promote to the best of his power and abilities, and wishes to see established, on the surest foundations, the principles of liberty, of justice, and of our constitution.

Jan. 29, 1780. A SENATOR.

For the MARYLAND GAZETTE.

THERE is no way more effectual to disgrace an opinion, than by seeming to advance arguments in favour of it, while at the same time, these arguments are of such a nature that all must perceive the author means very differently from what he says. This by the schools, is called irony, and is aptly made use of on great occasions, when, perhaps, sober reasoning or bold invective would have been less safe, or less proper to prevail on the minds of men out of temper with the debate. This way of writing the gentleman has used who personates a senator; seeming to appear against the confiscation bill, he has advanced many reasonings, and has pressed them with so much solemnity, that, absolutely, some persons have begun to believe that he might be serious. But if we take a view of the whole as they come together, we must see, that no man who appears to have read several books, and is capable of putting words together with exactness, could seriously propose these things on the subject.

He begins with observing, that "the justice of the measure" depends "on the knowledge of the true objects" of it. We know that it depends not on "the objects" but on the principle. A law or the execution of it becomes just when it is founded in reason, let it offend in its operation whom it may. It is the characteristic of the Most High himself, "that his ways are without respect of persons."

"An apprehension is expressed, that the confiscation of the property of "British subjects" may violate the "constitution and bill of rights" of this state. This is not possible, inasmuch as "our constitution," including the bill of rights, is a boundary line to the citizens of the state, in the mode of government, and in the enacting of all laws which relate to themselves. But how shall a law which respects not the citizens of this state, violate their rights? It would be equally true in mathematics, that the contact of two circles shall destroy the radii of one.

It is made a question, "Can these British subjects, supposed aliens, be ascertained by the law

Ridiculum acri
Melius, ac fortius magnas plerunque secat res.
 † These observations respect the first publication of the Senator.

of nations? If so, what necessity is there for a positive law to ascertain them? The law of nations is the law of reason applied to states, and it remains with the reason of each particular state to say what is law. This it can say in no other manner than by its declarations of its public acts. The bill in question is a declaration, and the measure will be a public act of the body politic. It respects "aliens," and is a sentence according to the law of nations, and not the enacting of a new law. It is necessary that commissioners be appointed to dispose of the estates of the condemned, and, in the mean time, that they have a warrant, of which nature is this bill. It is in vain to say, that these men ought to have a trial by jury, and before the judges, for they are not of any vicinage in this country, nor within the jurisdiction of the judges.

The Senator (for as he takes upon himself that title, we shall consider him as such) boldly avers, that the declaration of the British king and parliament could not convert the lawful and justifiable resistance of these colonies into rebellion. "The very supposition of a whole country being in rebellion is a monstrous absurdity." This I take to be a pleasant satire on all those who affect with much seeming earnestness what is self-evident. The declaration of the British court and parliament could not change the nature of our resistance, and make it rebellion, but it could give us to see that they considered it as such, and when it should be in their power, they were disposed to punish it accordingly. It is indeed absurd to suppose, that "a whole state can be in rebellion; for rebellion is the opposition of a part to the supreme authority; and unless the whole can take up arms against itself, the whole cannot be in rebellion. This proves not any thing that I know of; but the argument deduced from it, is, that as it would be wrong in the court of Britain to treat us, as rebels, so it would be wrong in us to treat the British nation as tyrants. For though some of them may be tyrannical enough in their conduct, yet there are others of them who have good intentions, and are "unoffending members." The authority of Rutherford is adduced as making this distinction. He observes under head "Thirdly," which the delegates omitted, "That though an injury which is done by a nation is communicated to all the members of it, as far as this injury produces an obligation to repair damages, yet the guilt of it, as it implies a disposition to do harm, is confined to the collective person of the nation, and to those particular members of it, who have made it their own act by their immediate and direct consent." Nothing is more true; for though the property of every individual of the nation, even women and children, is answerable for the damages and expences of the war, and may be applied for that purpose, whenever it shall be in the power of the injured state, yet, as to what may be imposed by the victors, as a punishment, it shall be levied on the collective body of the nation, or the property of the criminal members shall be confiscated on that account. It will be time enough for us to make this distinction in our treatment, of "criminal or unoffending members" of the British nation, when full reparation shall have been made for damages sustained, and for the expences of the war. Until that shall have been done, we have, by the words of Rutherford, an undoubted right to take the property of British subjects, under what ever predicament the owners are to be considered.

The Senator, quoting Rutherford, who speaks of the property of goods that are not to pass until the conclusion of the war, thinks he cannot mean "such goods only taken from the enemy, as may exceed the damages sustained by the injured party." But Rutherford himself, towards the conclusion of what he says under head "Thirdly," expressly tells us, that he does mean such goods. His words are, "I have here spoken of the property of all goods which are taken in war, as ultimately transferred by consent in treaties of peace, without having any regard to what is taken for damages, or for current expences." It then follows, that the author has not discovered due compliance to Rutherford, in affirming "the supposition to be inadmissible in fact, of course idle in theory, that the value of goods taken from the enemy may exceed the damages and expences of the war incurred by the nation taking them, and consequently amount to more than an equivalent for such damages and expences." But it must either have been, that in reading the book, he has turned over two leaves at once, as a man may very innocently do, and so missed the passage; or that through the whole of this essay, he is ironical, and having it in view to ridicule gross mistakes, he has given us one on purpose.

* Vattel, L. I. c. 39, 97.

If it should be said, that we cannot convert the property of the enemy to our own use, until the conclusion of the war, not being able before that time to tell what are the damages and expences of it, and so be in danger of taking more than we ought to take; the author very justly obviates this objection by observing, that "in modern wars, this is never the case; to write, therefore, and reason upon a thing which never does happen, is an unprofitable waste of time and paper, to say the least of it."

"All the cases adduced from Rutherford, and his reasoning on them, seem to apply solely to goods forcibly taken from the enemy on the high seas, or during inroads made into their territory, &c." The cases and the reasoning may seem to apply, but it is certain that they do not apply. To me indeed they do not seem to apply. But were it even so, surely no man can seriously mean to support an argument by the reasoning of an author, which may only "seem to apply."

What Rutherford only seemed to say, Vattel, in the opinion of the Senator, speaks fully out, for he talks of "lands possessed by foreigners in an enemy's country." But as by foreigners he means "neutral strangers," such as the Dutch or the Danes are to us, it does not even "seem to apply" to British subjects. Vattel proceeds, and observes, that "he who declares war does not confiscate the immovable goods possessed in his country by his enemy's subjects; permitting them to purchase, and possess these goods, he has in this respect, admitted them into the number of his subjects; but the income may be sequestered, &c." The intermediate sentence of this paragraph, which the gentleman judiciously omitted, explains the matter, shewing us, that this indulgence extends to those of the enemy's subjects who continue to reside in the country, and concerning whom there can be a presumption, that they are subjects. But, as to those who have departed, and mixed with their friends in the territory of the enemy, there is no such indulgence granted, because no such presumption can be formed.

"The quotation," therefore, "from Vattel discovers" nothing to the purpose; nevertheless, the Senator goes on to observe, that "to judge from the passage cited from Vattel, there does not appear to be any treaty, by which the above described property is secured to individuals among the several nations of Europe; such individuals owe the preservation of such property to the usage and custom merely of these nations, and not to any particular or special treaty." "Usage, or custom," is that which gradually and insensibly takes place between nations by mutual consent. And indeed this more than "special treaty" is the rule of conduct, to all nations in their treatment of each other. It is known that every outrage shall be retributed, and it becomes the general interest, and hence the general practice of nations to soften their conduct to each other. But where a nation departs from this humanity, and, instead of making war like men, makes war like devils, it becomes necessary to turn the law of nations, which is the law of reason, in its full rigour on them, to bring them back, if possible, to a more civilized practice. Nothing but the experience of a similar treatment to that which has been given and intended, can affect this. It may be well enough in common life, to talk of mild treatment to honest men who are our neighbours, and whose "custom" or practice it is to adjust, with as little bitterness as possible, the differences that, from the nature of their affairs, will unavoidably arise between them; but to hold out the like treatment to robbers, murderers, and cut-throats, would be the ready way to encourage them, and to fill the earth with blood-shed. If the conduct and intention of the British nation, as evinced by their declaration, ought to be the measure of our conduct to them, which is certainly the case, there will be nothing more just, than what, according to "Rutherford," is warranted by "the law of nature," to make slaves of those who shall fall into our hands, "by way of reparation for damages," if their property suffice not for this purpose. Nay, as their practice has been to starve our prisoners, to murder in cold blood, &c. and as by their law, which they have "declared" shall be executed on us, as far as they shall have it in their power, we are liable to lose, not only our property, but our lives also, it would be justifiable in us to retaliate, by putting to death the more criminal amongst them, that is, "in the present case," the tyrant himself, and those, "for instance," who, "by approving and engaging in the war, in address to the crown, by voting for it in parliament, or by carrying it on in person, have made the guilt properly their own." If we do not execute justice to this extent, with regard to any of them who shall fall within our power, it will be owing to our clemency, not to their desert. Nor would even then the scenes of

Marius and Sylla be renewed; for these men proscribed, and shed the blood of their fellow citizens, over whose liberties they had trampled, but we should imitate only what was done by Harmodius and Aristogiton, by whom the tyrant Pisistratus, and those whom he had around him were put to death, and to whose memory, statues were erected at Athens.

It is made a question, "what British subjects are to be deemed, upon legal principles, aliens in this state?" The answer is, that, on the principles of common sense, all British subjects are aliens. As to their being in "this state," that is another point. It is to be dreaded that there are too many amongst us who consider themselves as British subjects, writing and speaking on all occasions to assist the falling cause of their brethren.

It is again asked, amongst other things, "is the acceptance of a pension from the king of Great-Britain, &c. to render the pensioners British subjects, and alien enemies? If so they would be punished for the want of foresight." I think so, inasmuch as it has been the ground of their conduct; for could they have foreseen that the arms of the states would prevail, it is probable, that instead of offering their services to the king of Great-Britain, they would have offered them to the congress; and if they had not drawn pay in the mean time, yet they would have saved their lands, which perhaps would have been much better. As to "the not coming into this, or some one of the United States, before a particular day, &c." that "particular day" is, according to the law of reason, the first day of the war. For as no one, consistent with his obligations to the society of which he is a member, can remain an inactive spectator when it is engaged in war, so the first hostilities commenced against his country, is a signal for him to return. If he shall be absent after this time, and afterwards appear, it will remain, not with the judges, but with the supreme authority of the state, to admit or reject his apology. As to those who have withdrawn after the commencement of the war, without the consent of the public body, they are considered as no longer members, but, by the law of reason, have forfeited their property, having violated that condition on which they originally held it, which was the mutual defence and preservation of the commonwealth. Vattel calls them "infamous deserters" which the state has a right to punish severely. † I here is therefore no necessity for a law declaring such departure unlawful, for it is originally understood to be so, and the very constitution of society explains it. Should any act of the body politic announce this, it would be no "retrospective" law, but, a fresh promulgation of what had been law, and a bill to dispose of their effects, if they had left any, operating as we have said before, in the nature of a warrant, to commissioners appointed for that purpose. If any subsisting law of this state has held out to such, that on returning before a certain day they shall enjoy their possessions, it is unjust to ourselves, and though it cannot be prevented that those who have returned may take the benefit of it, yet it behooves that it be repealed as soon as possible. The bill in question being an act of a high authority as that by which the law was constituted, will be a virtual repeal of it. It indeed ought to be repealed, and we have a right, not only to take away the property of these "absentees" of whom the Senator speaks, but if at any time hereafter they shall come within our power, to "punish them as deserters." † Nor will this be thought hard, if we consider, that the angel of God himself enjoined the Hebrews to curse the family of "Meroz" who were absent in the contest; and some years afterwards, amongst the same nation, in the civil war with the tribe of Benjamin, the whole canton of Jabesh Gilead was put to the sword "because they came not to the battle."

The Senator supposes, that to confiscate the property of "absentees" who merely resided in the enemy's country during this contest, "is not consonant to the principles, either of natural or common law." We have shewn that it is "consonant to the principles of natural law," and all who know that the feudal system, which is the ground of the common law, made the oath of fealty and service in war, peculiarly above all others, the condition of holding landed property, will not doubt that the common law, above all others, enjoins this service, and if any one shall chuse to understand this beyond a doubt, we shall refer him to lord Hardwick on fines and forfeitures. As to the trial of these men, how shall we try them, when no writ of exigent can lay hold upon them? How shall we proceed against them as subjects, when they are no longer

* Grot. L. II. C. X. 2. Ruther. 35. 2 Earl. 220.
† Vattel L. I. C. 19, § 220.
‡ Vattel, ibidem.

ger members of the state undertakes to prove, that are American subjects, jects are British subjects conceive how two this for my part I should the declaration of the swallow himself. But adduced on the subject. tries 6, "that though a do any thing, that may vil things, &c. but g its power; for an act make a man to be born that where he really w lows the deduction of t cannot make a man ce subject who is really o subject cannot be an a assembly cannot make a the syllogism; an act o a man a civil birth, th all civil respects, a n act of banishment can that is, can cause him y He that is not a subject an act of assembly can But these men by depart ven themselves a civil de.

He "ventures to pr of a state, are the fut "while the duchies of actual obedience to th sons born within the within the realm of En enough; and though th knowledge of the law," little" was required to had discovered nothing could never have been As to Calvin's case, it that king James "eng the determination; and for both Englishmen a one crown; but when sovereigns, should th during the lives of an have puzzled that pri adjudication, to have to each other." Calg tor; but by the mere give him capacity for mon, according to Ju ledge of the art magic as he was called, acco have had an art not le judication of his judg ed the jarring nature o a Scotman an English cealed to owe obedie kingdom. But I do would answer if it c British subjects are American subjects Br they might "inherit might be also hanged to their respective go England for not ackn the states, and the su acknowledging the l rightful sovereign." I am persuaded, no independence, have British subjects.

The Senator "beli British property, as f of these states." The ed against hope, but he believes against fact I have gone thro taking up the main

* It would flatter i in 4 Bac. 639, that an ble a man to have m pose, "or can make lord mayor or a justice † After having dri authority over him. ‡ All of parliament can allegiance he lives und of nature. 4 Ea. 689. ¶ The fallacy of the his using the terms in case, and in the other ought to be used in a sine.

§ It must exceed the believe, that enemies, are, can "inherit other," when if they f except with a flag, they knocked on the head as be capable of suing in derive its authority fro authority they disown.

ger members of the state? The Senator indeed undertakes to prove, that all "British subjects" are American subjects, and all American subjects are British subjects. It is difficult to conceive how two things can be one; and for my part I should think it as improbable as the declaration of the man who proposed to swallow himself. But let us hear the evidence adduced on the subject. It is proved by a *Vox* tries 6, "that though an act of parliament may do any thing, that must be understood as to civil things, &c. but natural things are not within its power; for an act of parliament cannot make a man to be born in any other place than that where he really was born; and (here follows the deduction of the Senator) consequently, cannot make a man cease to be a natural born subject who is really one; but a natural born subject cannot be an alien, therefore an act of assembly cannot make an alien." Now to convert the syllogism; an act of naturalization can give a man a civil birth, that is, can make him, in all civil respects, a natural born subject. An act of banishment can give a man a civil death, that is, can cause him to cease to be a subject. † He that is not a subject, is an alien; therefore, an act of assembly can make a man an alien. ‡ But these men by departing from the state, have given themselves a civil death, and are become aliens.

He "ventures to pronounce" that the subjects of a state, are the subjects of that state; for, while the duchies of Guienne, &c. were under actual obedience to the kings of England, persons born within those duchies could inherit within the realm of England." This is probable enough; and though the Senator has "but little knowledge of the law," it was no matter, for "but little" was required to find this out. If lord Coke had discovered nothing more in his writings, he could never have been called "a great lawyer." As to Calvin's case, it is the expression of Home, that king James "engaged the judges" to make the determination; and it might be well enough for both Englishmen and Scotchmen; while under one crown; but when disunited under different sovereignties, should that case have happened, during the lives of any of the postnati, it would have puzzled that prince, notwithstanding this adjudication, to have made them "inheritable to each other." Caligula made his horse a Senator; but by the mere force of an edict could he give him capacity for that office? The first Solomon, according to Josephus, possessed a knowledge of the art magic; and this second Solomon, as he was called, according to the Senator, must have had an art not less wonderful, if, by an adjudication of his judges, he could have reconciled the jarring nature of the thing, and have made a Scotman an English subject, even after he had ceased to owe obedience to a sovereign of that kingdom. But I do not see what good end it would answer if it could be proved, that all British subjects are American subjects, and all American subjects British subjects; for although they might "inherit" to each other, yet they might be also hanged by each other as traitors to their respective governments; the subjects of England for not acknowledging the authority of the states, and the subjects of the states for not acknowledging the king of England as their rightful sovereign. The Americans, however, I am persuaded, now that they have declared independence, have no inclination to be proved British subjects.

The Senator "believes, that no confiscation of British property, as such, has taken place in any of these states." The patriarch Abraham believed against hope, but this gentleman does more, he believes against fact.

I have gone through this performance, taking up the main joints of the arguments,

* It would startle the Senator if he was to read in 4 Bac. 639, that an act of parliament can "enable a man to have an heir," i. e. to beget one. I suppose, "or can make a woman a man" i. e. "a lord mayor or a justice of peace."

† After having driven him out, it can have no authority over him. *Fat. L. A. C. XIX. 97.* An act of parliament can discharge a person from the allegiance he owes under, and restores him to a state of nature. 4 Ba. 689.

‡ The fallacy of the Senator's reasoning consists in his using the terms in one proposition in a natural sense, and in the other in a civil sense, whereas both ought to be used in a natural, or both in a civil sense.

§ It must exceed the faith of a common christian to believe, that enemies, as the Americans and British are, can "inherit" within the countries of each other, "when if they should come into these countries, except with a flag, they must be hanged up as spies, or knocked on the head as robbers; or, that they should be capable of sitting in a court of justice, which must derive its authority from a state or sovereign whose authority they disown."

have examined them, and am convinced, that the gentleman can by no means be serious. I take the whole to be a burlesque of the reasonings that are usually urged in conversation, and especially amongst the dissipated, against the confiscation bill; and tho' I like it well enough in that respect, yet I cannot say that I am so well pleased to see it put in the mouth of a Senator; for that any of the body could have talked in this wild manner is impossible; and if the common people could be brought to think so, it would affect the reputation of the whole and take away from the popularity of that branch of the constitution, which, as I esteem it valuable, I should be willing to see held in veneration.

Balt. Town, Feb. 17. PUBLICOLA.

For the MARYLAND GAZETTE.

THE more I reflect on the proposition, by the delegates, to confiscate British property, the better I am satisfied of the injustice of the measure. At the first view it appeared plausible, beneficial and necessary. The general opinion ran in favour of the seizure. Governed by our passions, and warm with resentment against the nation of Great-Britain for the miseries we have suffered in the war, we readily agreed to retaliate on the whole nation, without examining carefully into the principles of our conduct, or reflecting on its consequences. Revenge was sweet, and we forgot, that not only many innocent people, but some of our warmest friends and advocates, would be distressed or ruined by a general confiscation.

It is one of the first duties of every nation, to conduct itself agreeable to justice. Its happiness, prosperity, repose and honour, require a strict observance of this cardinal virtue. Republics, above all other forms of government, should be assiduously attentive to act agreeable to its dictates. Arguments of policy, reason of state, supposed cases of necessity, should never induce a departure from the principles of universal justice; whatever is in itself repugnant to the rules of morality, can never be politically right. If a state should act unjustly, what confidence will any nation place in its promises or contracts? How can a society, who has been guilty of a breach of faith; justice and honour, expect from its citizens an observance of those duties?

It must be admitted, that a confiscation of the property in this state, belonging to British subjects, without any discrimination, would injure hundreds of innocent people. Is it consistent with justice or generosity to wreak our vengeance on them, because the king, the ministry, and the parliament of Great-Britain, have waged an unjust war against us? They were neither principals nor accessories to the injustice of their rulers. They never consented to the war, and many of them openly opposed it, from its commencement to this present moment. Shall the virtuous efforts of our friends be rewarded with robbing them of their property? Justice and honour forbid it, and the feelings of humanity are hurt by the attempt. When the British parliament, for the destruction of some tea belonging to the East-India company, in Boston, suspended the trade of that city, and thereby reduced thousands of the inhabitants to distress and want, the first congress exclaimed against the injustice, the inhumanity of their conduct, and called upon the nation "to justify the involving the innocent in one common punishment with the guilty, and for the act of thirty or forty, to bring poverty, distress and calamity, on thirty thousand souls, and those not their enemies, but their friends." If for this indiscriminate revenge, congress declared, "that justice and humanity ought no longer to be the host of the British nation," let us take care that such conduct be not imputed to us. The cases are similar, and the observation will be retorted upon us, if we punish the innocent subjects of Britain for the criminal conduct of the rulers of that nation.

Whether the confiscation of private British property, is supported by the laws and practice of the civilized nations of Europe, I cannot pretend to determine. I would by no means have our infant republic imitate the piratical states of Barbary; and I wish the advocates for the seizure would answer the proper and pertinent question, whether they would wish to adopt the example of the polite and polished nations of Europe, rather than that of the robbers and pirates of Africa; Mahometans in religion, and barbarians in conduct.

The house of delegates ground the confiscation of private British property in this state, on this principle, and on this reason alone, that all British subjects are, at this time, alien enemies, and as such, not capable of holding any property within the state. I am ignorant whether the law of nations lays down any rule of criterion, by which a nation can judge what persons are to be

considered as aliens to it. I should conceive all those who are not members, citizens, or subjects of a nation, republic or kingdom, as aliens or foreigners; that is, belonging to another nation or people. I should think every civil society or state ought to be considered as a moral person, and all the members of it as its subjects. If the law of nations does lay down a rule, by which to distinguish the one from the other, yet laws applicable to independent nations, can never be received as a rule to us. Our case is very singular and of the first impression, and nothing similar may have ever happened before in the world, or ever received the decision of any of the learned civilians, cited by the house of delegates. The people of Great-Britain and the colonies (now United States) were, before the declaration of independence, one people, born under the same allegiance, due to one and the same sovereign, and no law of nations can lay down any criterion, by which, in revolutions similar to the present, the subjects of the new, can be distinguished from those of the old government. It is probable every nation may have adopted a law or rule for itself, to ascertain what persons shall be deemed its citizens or subjects, and what persons shall be considered as aliens or foreigners. The constitution of England may differ from that of France, and that of Spain from both. It seems to me, that children should naturally follow the condition of their fathers; and succeed to their rights; and that the place of their birth should make no difference; but I have understood that children of aliens, born in England, are naturally speaking, esteemed natural born subjects of that kingdom, and entitled to all the privileges of such; but in France, the child born of foreign parents is considered as an alien. In many countries a person is not deemed a citizen, unless born of a father who is a citizen; and if one is born in the state of a stranger, or alien, it will only be the place of his birth, and not his country. From hence it is evident, that a different rule is adopted by different nations; to ascertain their subjects or citizens. In England, the circumstance alone of being born there, naturalizes the children of an alien, or foreigner; in almost all other countries, it is otherwise. I cannot therefore see, how we can take the law of nations for our guide; indeed there does not appear to me to be any law of nations on the subject. Every nation has its own law, and may do, and each has a right to differ from the other. I therefore agree with the senator, to take the common law of England (to which our bill of rights declares we are entitled) to discover who are to be considered as aliens to this state. If the question is to be determined by the law of nations, who is to declare what that law is, our legislature or our judges? The two branches differ widely in opinion; and our judges may be as much puzzled as our legislators. If the question is left to our judges, who are well acquainted with the common law of England, they will be under no difficulty to declare who are to be considered citizens or subjects of, or aliens to, this state. By the common law of England, every person born within the dominions of the crown of Great-Britain, or in other words, within the allegiance of the king of Great-Britain, is a natural born subject, and natural allegiance is due to the king of Great-Britain from all persons born within any of his dominions, immediately upon their birth, and this allegiance is perpetual, universal, and unalienable. By the common law of England, an alien is one who is born out of the dominions or allegiance of the king of Great-Britain, and under the allegiance of some other prince or state, and the children of Charles II. born in foreign countries, were naturalized by act of parliament. It was a maxim of the common law, that every man owes natural allegiance where he is born, but this general principle was altered by statutes, by which all children born out of the king's allegiance, whose fathers were natural born subjects, were declared to be natural born subjects themselves. By the law of England, the king, by his letters patent, may make an alien born, an English subject, and after such denization, he may take land by purchase or devise, but he cannot inherit. An alien born may be naturalized by act of parliament, and then he will be entitled to all the privileges of a natural born subject, except to be a member of parliament, or of the privy council, &c. &c. The subjects of Great-Britain therefore, may be distinguished under three heads. 1. Natural born subjects. 2. Aliens made subjects by the king's letters patent. 3. Aliens created subjects by acts of parliament. From these principles it follows indubitably, that every person born within the dominions of the crown of Great-Britain, cannot be aliens to that nation; and the inference drawn by the Senator is conclusive, that all persons born before the declaration of independence, within the colonies, then part of the British dominions, but now U-

