" was allowed by the court to the officer, *for the trou-*
" *ble* and *charge* he has with prisoners, and of his at-
" tendance on the court, as a *reward* for the service."
21 H. 7. 17, 28.

Fees not settled by the legislature, and which may be lawfully received, *are not taxes*, because it is not competent to *any* person, not constituting the *legislature*, to *tax* the subject. The same authority distinct from the legislative, that *has* settled, *may* settle the fees, when the proper occasion, of exercising it, occurs. " *Where there is the same reason, there is the same law.*" Wherefore I presume to think, that though the *old* or *established* fees are not to be altered, increased, or augmented, yet, when fees are *due*, and the *rates* of them are *not* established, they may be settled *without* the legislative authority, because the *principle* of the authority *remains*, and it ought to be *active*, when the *reason* of it *calls* for *exertion*. Though the Citizen had admitted that the lords *alone*, the commons *alone*, the upper and lower houses *separately*, the courts of law and equity, have lawfully settled the fees of their officers, and consequently fees so settled are *not taxes*, which cannot be laid but by the act of the *whole legislature*, *yet* has he cited 2d inst. to prove that *fees* are a *tax*——again, from some proceedings of the house of commons, he infers a power in the commons *alone* to settle fees in the *courts*, so that he is of opinion *at one time fees are a tax*, at *another*, he *admits* they are *not* a tax, *again* he asserts that they *are* a tax, and *again* that they are *not* a tax.

" Quoteneam vultus mutantem Protea nodo"

(with what nooſe may I hold this Proteus, ſo often ſhifting his forms). Having given an extract of ſome proceedings of the houſe of commons upon an enquiry into fees received by the officers belonging to the law, and of the reſolves of the committee, that " it was " their opinion the long diſuſe of publick enquiries " into the behaviour of theſe officers had been the oc-" caſion of unneceſſary officers, and illegal fees—that " the intereſt of the great number of officers was the " occaſion of extending the forms to unneceſſary " lengths, of great delay, and oppreſſion, and that a " *table* of all the officers, and of *their fees* in chancery " ſhould be *fixed*, and *aſcertained* by *authority*, which " table ſhould be regiſtered in a book in that court, to " be inſpected at all times gratis, and a *copy* of it *ſign-*" *ed*, and *atteſted* by the *judges*, ſhould be returned to " each houſe of parliament to remain among the re-" cords," the Citizen makes a *ſagacious*, and *pertinent* obſervation, which gives an *adequate* proof of his conſtitutional knowledge, and logical abilities—" if the " commons (ſays he) had a right to *enquire* into the " abuſes committed by the officers of the courts, *they* " had, no *doubt* the *power* of correcting theſe abuſes, " and of *eſtabliſhing the fees* in thoſe courts, *had they* " *thought proper*."

Without doubt the parliament, or the general aſſembly may eſtabliſh fees; but the Citizen's concluſion is, that the commons *alone* can, and the premiſes whence he draws his egregious inference are that—the commons have authority to enquire into the abuſes committed by the law officers—ſo that his argument in form is this—*whenever* the *commons* have a *right to enquire* into any ſubject, *they may eſtabliſh* whatever *they may think proper* concerning *that ſubject*.

" Navim agere ignarus navis timet; abrotonum ægro
" Non audet, niſi qui didicit, dare; quod medico-
" rum eſt
" Promittunt medici: tractant fabrilia fabri."

" The ign'rant landman ſhakes with fear
" Nor dares attempt the ſhip to ſteer;
" He who ne'er learn'd the doctor's trade,
" To give ev'n ſouthernwood's afraid;
" Profeſs'd phyſicians cure by rules,
" And workmen handle workmens tools.

The magnanimous citizen however undertakes *any thing*, though it muſt be confeſſed by his admirers, that a little more diffidence would impeach his underſtanding, no more than it would tarniſh his modeſty; but though the extract is entirely *deſtitute of all force in the Citizen's application of it*, yet it ſuggeſts an additional circumſtance in favour of the proclamation, which his malevolence has arraigned, and his arrogance has cenſured: for the opinion of the commons may be juſtly inferred from theſe expreſſions in their reſolves, " a " *table* of *all the fees ſhould be fixed*, and eſtabliſhed by " *authority*, that a *preciſe ſettlement of the rates* would be " the *proper means* of *preventing extortion*," according to Serjeant Hawkins's obſervation already recited, and from the expreſſions, " the table of fees ſhould be re-" giſtered in a book open to inſpection gratis, and a " copy of this table *ſigned* and *atteſted by the judges* re-" turned to each houſe of parliament," it may alſo be juſtly inferred that the " *authority*" meant was *not repoſed* in *themſelves*, and *as they were to be informed by a copy, ſigned and atteſted by the judges* of the *ſpecifick* exerciſe of it, that the judges, who were to give information under their ſignatures, and official atteſtation, were underſtood to be the perſons veſted with the *authority* to *fix*, and *eſtabliſh the fees*. The ſettlement of fees a tax, and yet the commons acknowledged the authority of the judges to make the ſettlement.

——" Putat tonſor ſibi poſcere navim
" Luciferi rudis? exclamat Melicerta, periſſe
" Frontem de rebus——

(A) " Should a mere barber think to aſk
" A pilot's truſt, (an arduous taſk)
" Yet cannot, ſuch a dunce is he,
" An obſervation make at ſea,
" Well * Melicerta might exclaim
" That he had loſt all ſenſe of ſhame.

*(A) I have taken ſome liberty with Perſeus but not more than the Citizen has done in his motto with Pym's ſpeech—*

" *Neque enim lex æquior ulla eſt.*"

* *The marine deity.*

That queſtions ought not to be prejudged is another of the Citizen's objections. This is very true in a proper application, but extremely abſurd in the Citizen's—if there were no precedents, or eſtabliſhed rules, the meaſures of juſtice might be very unequal, and the ſcales uneven and unſteady. " Miſera eſt ſervitus, " ubi jus eſt vagum." The utility of precedents conſiſts in the *very effect*, which is the *ground* of the Citizen's objections, that *ſimilar* caſes are governed by them. Without *this* effect, conteſts would be infinite. What he calls *prejudging*, is that which is the conſequence, the ſalutary, beneficial conſequence of legal certainty, preventive of endleſs litigation, vexation, and diſtreſs. The judges muſt have therefore, ſome fixed, ſtable rule for the aſcertainment of coſts. Indeed, reader, I find it to be a very irkſome taſk to encounter ſuch extreme ignorance, blended with ſuch exuberant vanity, pertinacious impudence, and connate malignity, and to unravel the contexture they have formed. I obſerved in my former letter, that the courts of law and equity had ſettled fees, and the Citizen aſks by what authority. The paſſage in Hawkins, already quoted, anſwers the queſtion. Admitting, however, that the judges have ſettled fees, the Citizen alleges the " precedent does not apply." Surely to prove that the ſettlement of fees is not a *tax*, which nothing leſs than the *full legiſlative authority* can eſtabliſh, and therefore the precedent applies to deſtroy the very principle on which he has " ſpent his feeble " efforts" to prove the proclamation an arbitrary tax, as ſubverſive of liberty as the levy of ſhip-money.

" Cercopithecus quam ſapiens eſt animal, ætatem
" qui uno ottho nunquam committit ſuam, quia ſi u-
" num oſtium obſideatur, aliud perfugium gerit."

(B) " So wiſe the monkey, that he ne'er confides
" His ſafety to *one* paſſage; but provides
" That, if th'adverſary ſhould *one* make ſure,
" *Another* then may his retreat ſecure."

Leſt the objection to the proclamation *that it is a tax* ſhould be refuted, the *ſagacious* Citizen has provided another *outlet* for eſcape. " The precedents of judges " having ſettled fees, ſays he, do not apply, becauſe " they have not ſettled *their own* fees: but the com-" miſſary, ſecretary, judges of the land-office, being " members of the council, and adviſers of the proc-" lamation (that is) *concurring* with the advice of the " *miniſter*; *may be ſaid* to have eſtabliſhed their own " fees; and the governor *(C)* as *chancellor*, *decreeing* " his fees according to the very ſettlement of the pro-" clamation, would and ubtedly a certain and ſettle " *his own fees*, and be *judge in his own cauſe*." Here the idea of tax is dropped. Who the *wicked miniſter* is, we ſhall be puzzled to find out. The commiſſary, ſecretary, and judges of the land-office *concurring with his advice*, he is not to be ſought after in *this* act of officers. " It may be ſaid," to be ſure, Mr. Citizen, *any thing* may be ſaid—the proclamation however has no relation to the chancellor; † Plain Truth has ſufficiently expoſed the abſurdity of this imputation. " The " governor *decreeing* his fees as chancellor!" " He is " generous, of a good heart; but youthful, unſuſpi-" cious, diffident." I ſhall not analize your compoſition; but pray, Mr. Citizen, let me aſk, what reaſon, what experience, what probable conjecture have you to extenuate your affrontive inſinuation? Has he ever been a judge in his own cauſe? Has he ever betrayed any ſymptom of an inclination to be ſo? Again at your *miſchievous tricks* " tam forma & mores ſunt conſimiles" the proclamation has no relation to the judges of the land-office, their fees are ſettled in a different manner,

*(B) Here too, after the example of the Citizen, I have been a little free with Plautus.*

*(C) What the Citizen has remarked, in one of his notes, to prove it inconſiſtent with the ſecurity, which the conſtitution of England affords in the diſtribution of the legiſlative, executive, and judicial powers, for the governor to be chancellor, proceeds from his very crude ideas of the Britiſh polity*—" *were* the judiciary *power joined with* the legiſla-" tive, *the* life *and* liberty *of the ſubject would be expoſed* " *to* arbitrary controul: for *the* judge *would* then *be* " legiſlator;" *but this does not prove that if a* branch *of, and not the* whole *legiſlature exerciſes a judicial power, there would be this conſequence. The lords who are a* branch *of the legiſlative exerciſe a* judicial *power. The king, in whom the executive power is lodged, exerciſes,* perſonally, *no judicial power, conſidering the royal dignity and pre-eminence the idea of his being a judge in an* inferior, *ſubordinate and controulable juriſdiction would be abſurd, and if the judicial power ſhould be repoſed in him abſolutely, and concluſively, and his deciſions not ſubject to examination and controul on an* appeal *to a* ſuperior *juriſdiction, there would be great danger of, becauſe there would be no* regular *method to prevent, violence, and oppreſſion—now the chancellor, though he exerciſes a judicial power, and is veſted with the executive, as governor, cannot commit the violence, and oppreſſion dreaded, becauſe there is an* appeal *to a* ſuperior *provincial juriſdiction, and his decrees may be reformed, or reverſed, and an ultimate appeal too is provided to the king in council; and, moreover, he is removeable, accountable, and even puniſhable, for violence and oppreſſion—whence then the danger to liberty from the chancellor's violence and oppreſſion. In New-York, and in the Jerſeys, the governors are chancellors—in Virginia the governor, and alſo the members of the council, the executive, and* two *branches of the legiſlative exerciſe an extenſive judicial power in matters of equity, law, and of crimes. Should any branch of the legiſlative, whether governor, upper, or lower houſe, aſſume, in* any inſtance, all *the powers legiſlative, executive, and judicial, without doubt, it would be an extreme violation of the conſtitution, and the Citizen's impartiality would ſeverely condemn it, though a tenderneſs for his connexions may prevent his publick cenſures. A ſimilar affection, perhaps, inclined him to poſt over a queſtion, or two, in my former letter. I do not wiſh him to offend* any *of his connexions. Let thoſe, whom he has honoured with his regard, ſtill enjoy it, however oppoſite their political walks, political attachments, and the colours of their* apparent *political principles may have been.*

† See the Gazette, No. 1436.

and the legality of it does not depend upon any queſtion of prerogative; but on the *power every owner has over his property*, to diſpoſe of it upon ſuch terms, as he thinks proper. The advice of the council was not aſked on this ſubject. This regulation too you have repreſented to be as arbitrary as the ſhip-money aſſeſſment, and with equal facility you may prove it to be a tax, or a rigadoon.

The governor and council were twelve in number, of whom two only can be ſaid (I mean with truth) to have any intereſt in the effect of the proclamation. The governor was not to be *directed* by the *ſuffrage* of the council; he was to judge of the propriety of their *advice* upon the *reaſons* they ſhould offer. It cannot be aſſerted (I mean again with truth) that they were not unanimous, though the Citizen has the aſſurance to affront them with the reproachful imputation of being implicit dependants on *one man*. The proclamation was the act of the governor flowing from his perſuaſion of its utility. He had promiſed, *publickly* and *ſolemnly promiſed* that " if the prerogative ſhould inter-" poſe in the ſettlement of fees, *he* would take good " care to act on *mature conſideration*, and what *he* ſhould " *judge* to be right and juſt, would be the *only* dictate " to determine *his* conduct." He again, as publickly, and ſolemnly declared that, " ſo clear was his *convic-*" *tion* of the propriety, and utility of a regulation to " prevent extortion, and infinite litigation, if it was " neceſſary, inſtead of recalling, he would renew his " proclamation, and in ſtronger terms threaten all of-" fices with his diſpleaſure, who ſhould preſume to " aſk, or receive of the people any fee beyond *his re-*" *ſtriction*." In his proroguing ſpeech he again *declared* that " He had iſſued the proclamation ſolely for " the benefit of the people, by *nine tenths* of whom, " he believed it was ſo underſtood." But you, Mr. Citizen, have aſſerted, an abſolute, direct, impudent, malicious (I will give you, as it is upon paper, a *diſſyllable*) falſhood, that he was *not* determined by *his own* judgment, but by the dictate of *a man* whom ſometimes you call a clerk, ſometimes a regiſter, and ſometimes miniſter, and that nine tenths of the people do not believe the proclamation iſſued for the purpoſe, ſo publickly, ſo ſolemnly declared. The contradiction, it muſt be confeſſed, is direct and pointed, and if advanced on ſufficient grounds, the veracity, ſincerity, and honour of —— would be ——— but I know it to be an infamous, impudent calumny (characteriſtical of the author of it) prompted by the temerity of ungovernable malignity. To atone for this inſolence, the maxim, " the king can do no wrong," is introduced, and on what principle? Not ſuch as would allow an application to a ——— who ſhould happen to be old, or middle-aged, or circumſpect—He muſt be " youthful, unſuſpicious, &c. &c."—really this ſeems to be an innovation, rather arbitrary—*legal maxims* have been underſtood to be *rather unpliant*; however as *you* can ſo eaſily *garble moral* ones, who will diſpute *your* addreſs in modifying the legal? Would he but act as he ſhould—alas! would he but—then " he " would be a little god below," and be *worſhipped accordingly*; ſomething *more* than a king. " The gover-" nor however, you ſay, is no king"—but yet again you tell us, " kings have *revoked* proclamations, and " *therefore*, though the governor has *affixed his ſigna-*" *ture*, he may *diſavow* his act." Again, " He is " *improperly* called the king's *miniſter*, he is *rather* his " *repreſentative*, or *deputy*. He forms a diſtinct branch " of the legiſlature, and he has the power of life and " death," and as a repreſentative, or deputy, cannot act *beyond*, or *out of* the *capacity* of his conſtituent, or principal, you have, Mr. Citizen, *clearly proved* in your *peculiar* ſtyle, that the governor is the *repreſentative* or *deputy* of the king, *becauſe* the king *cannot* execute a *judicial* office; and, the governor *can*—a grave refutation of ſuch nonſenſe *about* the governor's being a king, and not a king, would be, indeed, ridiculous. The mean, fooliſh ſervility of the intended palliative offers an inſult to his underſtanding, *whoſe* ſincerity, veracity, and honour you have ſo inſolently attacked. But to return to Serjeant Hawkins, and anſwer the queſtion which, in the triumph of ignorance, you have propoſed: " Have not the officers who adviſed, and " the governor who iſſued the proclamation, ſet their " own rates?" No, I have ſhewn, they have not—your *law* caſe is nothing to the purpoſe, or I would ſhew it, *not to be law*. You may perceive, if not quite blind, that I have not by ſilence admitted the imputation, neither have I denied the advice I gave " as far " as I gave it:" but I deny (what your impudence, and *mendacity* have aſſerted) that *any one* man of the council was the dictator of the proclamation, though I avow it to be my opinion, the meaſure was expedient, and legal. I deny what you have aſſerted, and without reſerve charge you with having outraged truth with the moſt impudent, and flagitious malice, on the mean baſe motive of engaging the paſſions of thoſe, whom you have ſtudied to delude by a feigned regard for the publick welfare, to aſſiſt you in the gratification of a narrow, perſonal, fordid enmity. Take this as an anſwer to all your deſultory, baſe, malevolent aſſertions of the controuling power of *a wicked miniſter*, and bluſh, *if* you have any ſenſe of ſhame left.

——" pudet hæc opprobria dici,
" Et dici potuiſſe, & non potuiſſe refelli."

I have been the more direct, and explicit in my diſavowal, leſt your unprincipled confidence ſhould caſt a blemiſh upon the honour of the other members of the council, whom you aim to render *contemptible*, that you may make *one* man publickly obnoxious, who, deſpiſing the impotence of it, bids defiance to all the efforts of your malice.

I alleged in my former letter that the proclamation, by reſtraining the officers, prevented extortion, and recited it at large that the reader might form his own judgment; but, ſays the Citizen " it ought rather to " be conſidered as a *direction* to the officers what to de-" mand, and to the people what to pay." This word " *rather*" ſeems to be a favourite, it does not *aſſert*; it only *ſqueaks* inſinuation, what is meant by " di-