

would rather be inclined to connive at Improprieties in the Manner of exercising the Right, than scan it with a View to censure.

L. H. J.
Liber No. 54
Nov. 20

M.^r William Steuart having been committed, by Order of your House, to the common publick Goal, made his Application to me, for Relief against the Oppression of an arbitrary Procedure claiming that Benefit of Protection, to which He, in common with his fellow Subjects, is entitled. A Copy of his Commitment was laid before me, by which it appeared that, on the accumulative Charge “of having taken Notes of Hand, as the Clerk of the Land Office for the Payment of fees contrary to Law, for imposing an Oath as a Justice of the Peace, not appointed, and required by Law, and for an high Contempt of your House” he was committed “to be kept safe and close in the publick Goal, until he should be thence discharged by Order” of your House. I required the Consideration, and Advice of the Council upon all the Circumstances of the Case, and their Opinion was, that you had assumed an unwarrantable Jurisdiction, which, if admitted, would cancel all the Guards, and Securities, provided by a wise, and free Polity for the Protection of the Subject, and that, having been illegally deprived of his Personal Liberty, M.^r Steuart was entitled to the Relief, which an Exertion of the Prerogative might afford him. In Consequence of this Opinion, and the Reasons by which it was supported, I interposed by proroguing the General Assembly from Friday, till the Monday next following; after having passed all the Bills ready for my Assent, and flattered myself, that a short Recess (as it had been on other Occasions) would rather be productive of sedate Reflection, than of the heavy Charge that I had effectually dismissed a publick Offender from Confinement, obstructed publick Justice, and in Terms of very indefensible Exaggeration, occasioned a considerable Expence to the Province, and a total Stagnation of important Business for several Days. In Vindication, as well of the Gentlemen of the Council, as of myself, I shall succinctly rehearse the Reasons they advanced in Support of their Advice. They observed that, where the Legislature and executive Authorities, the Will to ordain, and the power to enforce it, are lodged in the same Person, or persons, there a Tyranny is established; That under this free Constitution, these Authorities are therefore, distributed into different Apartments [*sic*]; That the Executive being in the supreme Magistrate; neither House of Assembly can undertake the Administration of existing Laws without a dangerous Infringement of the Constitution: That, of the Legislative, you are but one of the component Parts; That a Right to determine the fees charged were excessive, implies the Right to settle the exact Compensation due for the Services performed, because without the Standard what fees are adequate, what are more, or less than the just Proportion can't be ascertained; That your rigorous Commitment was bottomed