" ſheriff, or other miniſter of the King, ſhall take any " reward for doing of his office, *but only that which the* " *King alloweth him*, on pain that he ſhall render dou- " ble to the party, and be puniſhed at the King's " pleaſure, and this was the antient common law, and " was puniſhable by fine, and impriſonment; but the " ſtatute added the aforeſaid penalty. " Some latter " ſtatutes having permitted them to take in ſome " caſes, by colour thereof, the King's officers, as " ſheriffs, coroners, eſcheators, feodaries, jailers, " and the like, do offend in moſt caſes; and ſeeing " this act yet ſtandeth in force, *they can't take any* " *thing*; but where, and ſo far as latter ſtatutes have " allowed to them. Yet ſuch reaſonable fees as have " been allowed by the courts of juſtice of antient time " to inferior miniſters, and attendants of courts for " their labour, and attendance, if they be aſked, and " taken are no extortion."

In his expoſition of the ſtatute de tallagio non concedendo, Coke lays down the poſition, that where the grant of fees would amount to a tax, " it can't be " done without act of parliament." In the paſſage juſt cited from his 1ſt inſt. it appears that " ſuch " reaſonable fees, as have been allowed by the courts " of juſtice of antient time &c." may be taken, and therefore theſe fees fall not under the predicament of tax, which can be laid only by act of parliament.

I muſt firſt obſerve, that this ſtatute of Weſtm. relates only to officers ſupported by ſalaries, and not by fees from ſuitors. " *They are to take only that, which* " *the King alloweth them.*" The conſtitutional officers in Maryland, derive no ſupport from ſalaries, or any other allowance, than the fees they receive from thoſe, for whom they perform ſervices; the right to demand, and receive ſuch fees is coeval with the inſtitution of their offices, and therefore they are not within the purview of this ſtatute, which deſcribes, and relates to, officers prohibited from taking " *any* reward for " doing of their office; *but only that which the King* " *alloweth*;" but yet notwithſtanding the abſolute terms of this ſtatute, Lord Coke obſerves, that " ſuch " reaſonable fees, as have been allowed by the courts " &c." may be taken. The ſtatute is ſo far from permitting the taking even of theſe fees, that the words of it are in the negative, " not any reward ſhall be " taken" beyond the crown's allowance; and yet, by conſtruction, fees allowed of antient time by the judges may be taken with impunity. I have already remarked, and ſhewn, that this ſtatute does not extend to conſtitutional officers in Maryland, whoſe right to receive fees is coeval with the inſtitution of their offices, and who have no other ſupport, than what they derive from theſe fees. The objectors having, however, obſerved, that it does not appear, " the " judges have ever impoſed *new* fees by their ſole au- " thority," I will purſue the ſubject a little farther, though I have already given an anſwer to their caſe, and inferences from it. The paſſage cited from Coke ſhews that fees allowed by the courts may be lawfully received even by officers deſcribed in the ſtatute of Weſtm. 1ſt—upon the allowance of theſe fees, ſurely they were *new*, the allowance was by the judges, and thereto e without doubt, when made, *new* fees were allowed by the judges by their ſole authority. If the fees, thus allowed, were originally, when they were *new*, taxes, they have not ceaſed to be taxes, in conſequence of the frequent repetition of the acts of payment, and receipt, and of their having obtained the denomination, " antient fees." Serjeant Hawkins having taken notice that, " at the common law " affirmed by Weſtm. 1ſt, it was extortion for any " miniſter of the King, whoſe office did any way con- " cern the adminiſtration, or execution of juſtice, or " the common good of the ſubject to take any reward " for doing his ſervice, except what he received from " the King," makes this remark, " ſurely this was a " moſt excellent inſtitution, highly tending to pro- " mote the honour of the King, and the eaſe of the " people, and hath always been thought to conduce " ſo much to the publick good, that *all preſcriptions* " *whatſoever*, which have been *contrary* to it, have " been holden to be void, and upon this ground it " hath been reſolved, that the preſcription, by virtue " whereof the clerk of the market claimed certain " fees for the view, and examination of all weights " and meaſures, was merely void." The allowance therefore of the judges was lawful, when made, and when the fees were *new* or it could not become ſo by length of time, ſince *no* preſcription contrary to the common law, affirmed by the ſtatute of Weſtm. 1ſt is good. Hence it appears that the judges have an authority incident to their office to ſettle the rates of fees. That the ſettling, or fixing the rates of fees has been deemed to be a proper preventive of exceſſive exaction will, moreover appear from the following proceedings. Among the rules, and orders of the court of chancery publiſhed in the year 1739, the following order occurs—" it is his Majeſty's pleaſure, " that the judges of all his Majeſty's courts at Weſt- " miniſter do impanel juries of the officers, and clerks " of the ſame courts, to enquire what fees have been " uſually taken by the ſeveral officers for the ſpace of " thirty-years laſt paſt, upon certificate whereof his " Majeſty will take ſuch courſe for ſettling fees, as to " his wiſdom ſhall ſeem meet, and the lord-keeper is " to ſignify this his Majeſty's pleaſure to the judges of " the other courts, that they may perform the ſame " this term!" Among the rules, and order of C. B. publiſhed in 1708 is one, to the following effect, " a " jury of able, and credible officers, clerks, and at- " tornies once in three years ſhall be impanelled, and " ſworn to inquire of new, exacted fees, and of thoſe, " who have taken them under whatever pretence, and " to prepare, and preſent a table of the due, and juſt " fees, that the ſame may be fixed, and continued in " every office."

In the year 1743, an order was made in chancery by Lord Hardwicke, reciting that " the King *upon the* " *addreſs of the commons* had iſſued his commiſſion for " making a diligent, and particular ſurvey, and view " of all officers of the ſaid court, and inquiring what " fees, rewards, and wages every of theſe officers " might, and ought lawfully to have in reſpect of " their offices, and what had of late time been unjuſtly " encroached, and impoſed upon the ſubject, that the " commiſſioners ſhould propoſe in writing means and " remedies for reforming abuſes, and certify their " proceedings to his Majeſty in chancery, reciting alſo " the execution of this commiſſion, and the certificate " of it, and that his lordſhip, being deſirous that the " ſuitors ſhould enjoy the benefits propoſed in the cer- " tificate, had thought proper the ſame ſhould be eſta- " bliſhed by the authority of the court, and obſerved, " till ſome further or other proviſion ſhould be law- " fully made touching the premiſes, therefore his " lordſhip by the *authority* of this honourable *court*, " and with the *advice* and *aſſiſtance* of the maſter of " the rolls, doth hereby order, and direct, that the " maſters, or their clerks, do not demand, or take " any greater fees, or rewards for buſineſs in their " reſpective offices, than the fees or rewards follow- " ing, viz." Then are added tables of the fees of the reſpective officers. Among the fees ſettled by this order, with the advice of the maſter of the rolls, are the fees claimed by the *latter*, and the officers, not obſerving this order, are threatened with the ſame puniſhment, as for a contempt of the court. A proviſion is made for the payment of the fees of chancery by this rule, " if any cauſe be ſet down for hearing, in " which the fees have not been paid, this may be al- " leged by the officers to ſtop the hearing of the " cauſe," and the hearings of cauſes have been accordingly ſtopped by the court, on the clerk's inſiſting to have his fees paid, or ſecured. 2d P. W. 461. 2 Vez 112. Roll, chief juſtice, declared that " if a cli- " ent, when his buſineſs is diſpatched, refuſe to pay " the officer in court the fees due to him for doing " the buſineſs, an attachment upon motion will be " granted againſt him for commitment, till he pay " the fees due; for the not paying fees is a contempt " of the court, and the court is bound to protect their " officers in their rights." P. R. 598.

How has the greater part of fees been ſettled, or aſcertained, but by the allowance of the courts on the principle explained by Hawkins, in purſuance of the authority incident to the offices of chancellors, and judges? Every inſtance of a fee, ſo ſettled, contradicts the notion, that the ſettlement of the rates of fees is a tax, becauſe it is not competent to any other than the legiſlative authority to tax. This power of the judges is founded on utility, juſti prope mater, & æqui, for, without the reſtriction of fixed rates, officers might commit exceſſive exactions to the grievous oppreſſion of the people. If it ſhould be aſked, how does it appear, that the far greater part of fees hath been ſettled by the allowance of the courts, and not by ſtatutes? I anſwer, becauſe the officers entitled to fixed rates can derive this right only from the determination of the courts, or the proviſion of ſtatutes, and it does not appear by the ſtatutes, to which we may have recourſe, and collect the inſtances, wherein fees are ſettled by them, that the legiſlative proviſions extend to any conſiderable proportion of the fees of officers.

The proceedings of the commons in 1752, as I obſerved in my former letter, ſhew the opinion of the committee to have been, that tables of fees fixed and eſtabliſhed by the authority of the judges would be the proper means to prevent exceſſive exactions, and the committee could not but know, that the greater part of the fees was claimed by the officers, iedependent of ſtatutes, and this claim would be more firmly eſtabliſhed by the propoſed tables. If theſe fees were taxes, and therefore unlawful, it is not to be imagined that a meaſure would have been recommended by the commons, tending in any degree to countenance an infringement of the privilege, they are ſo peculiarly tenacious of, that of their being the firſt ſpring of all taxes. This remark applies to the order of Lord Hardwicke in 1743, in conſequence of the addreſs of the commons, and the commiſſion from the king. When fees are due to officers, and the rates not fixed, the judges, in very many inſtances, are obliged by ſtatute law to ſettle or aſſeſs the fees. For at the common law, coſts were not given to plaintiffs, though the juſtices in eire, in aſſeſſing damages, uſually aſſeſſed a ſum ſufficient to ſatisfy the coſts expended; but the ſtatute of Glouceſter is the firſt principal act, which gives coſts, and though only the coſts of the writ are taken notice of in this ſtatute, yet the proviſion hath been extended by conſtruction, to the other charges of ſuit. Where coſts are due, the judges are *obliged* to award them. The ſum, or amount of them *muſt* be aſcertained—in this amount are the fees of the officers, which muſt therefore be aſcertained, if not otherwiſe fixed, by the allowance of the judges. When fees are due, and the rates not fixed, the judges are not only authoriſed, but obliged by ſtatute to ſettle the rates, becauſe they are obliged to award coſts, a duty they can't perform without aſcertaining the fees. I have already obſerved, that juſtice can't be adminiſtred without the exerciſe of this authority, the ſtatute law can't be carried into execution without it, and have ſtill the preſumption to conclude, that what is eſſential to the adminiſtration of juſtice, to the execution of the law, to the general protection of the people, is not like the ſhip money, an arbitrary, deſpotic impoſition derogatory from the fundamental principles of a free conſtitution, though an orator on a table, magno blaterans clamore (ſputtering with great vociferation) ſhould bellow out his horrible indignation.

I ſhall now proceed to examine, ſuch of the objections to the preſent regulation of fees, as are not already directly obviated, without paying much attention to the flowers, and ornaments of declamation, with which they are moſt admirably bedecked.

Objection. The act of aſſembly, which regulated the fees of officers, was temporary, principally on this conſideration, that there might be frequent opportunities of correcting and altering the tables of fees; but if fees may be ſettled by any other, than the legiſlative authority, upon the expiration of the temporary act, then the regulation of the fees by the temporary act may become perpetual, againſt the intention of the delegates, who concurred in enacting the temporary law.

Anſwer. Though ſuch was the motive, as the objection aſſigns, for making the act temporary, yet, when the act expired, the authority, which exiſted before the enaction of the temporary law, of courſe revived, ſo that the queſtion is, whether there was an anterior authority to ſettle the rates of the fees due to the officers? which I have already conſidered. The rates ſettled by the temporary act might juſtly be adopted in the new regulation, and very properly, becauſe the moſt moderate of any, that had ever been eſtabliſhed; but the whole regulation could not be continued, becauſe it gave the remedy of execution to the officers. At any time before, or after the expiration of the temporary act, the tables of fees, without doubt, might have been corrected, or altered, by the whole legiſlature, *not by the delegates alone*, but the operation of the temporary act did not, in any degree, extend beyond its limited duration. Whilſt in being, it controuled all other authority; when it ceaſed, all its controul of any pre-exiſtent authority ceaſed.

Objection. If the judges have authority to ſettle the rates of fees, when fees are due, but their rates not fixed, there was no occaſion for the parliament to aſcertain fees, in a variety of inſtances. If the judges can ſettle fees, as well as the parliament, there would " *ſeem*" to be two diſtinct powers capable of the ſame thing, and, " *if co equal*," they may claſh. If the legiſlative branches ſhould diſagree, and in conſequence of ſuch diſagreement, there ſhould not be a regulation of fees by an act, the interpoſition of parliament may be rendered nugatory, ſhould the want of a legiſlative regulation be ſupplied by the authority of the judges.

Anſwer. Parliament may have peculiar motives for ſettling fees in various inſtances—when laws are enacted, requiring the ſervices of officers, the merit of ſuch ſervices are very properly conſidered, and the reward aſcertained. Pecuniar penalties, which judges can't inflict on the general principles of law, may be deemed expedient on many occaſions. Judges may eſtabliſh rules of practice in their courts; but the practice of courts has been regulated by parliament in various inſtances, and without doubt, may be in all. The notion of parliament, and the judges having a co-ordinate power, which might claſh in the exerciſe of it, is too whimſical to require a ſerious anſwer. Parliament conſiſts of three branches, and they muſt all concur to eſtabliſh laws, and how the judges, by ſupplying the want of a legiſlative regulation when there is none, can render the interpoſition of parliament nugatory, is beyond my conception. The interpoſition of parliament, declaring the legiſlative will, is a law, without ſuch a declaration conſtituting law, there can be no interpoſition of parliament. The power of the judges will prevail againſt the declaration, or reſolve of one branch of the legiſlature, becauſe this power is controulable only by a law, and ſuch declaration, or reſolve is not a law, nor has it any degree of conſtitutional efficacy either in prohibiting the exerciſe of any pre-legal authority, or in conferring a right to exerciſe an authority, not before legal.

Objection. Should the leading members of one branch of the legiſlature be deeply intereſted in the regulation of fees, that branch would probably endeavour to obtain an exorbitant proviſion, which another branch would diſſent to. The two branches diſagree, and no law is made. A neceſſity for the judges to act is infiſted upon, and they may, " *perhaps*," eſtabliſh the very fees, perpetually, which one branch condemned as exceſſive—judges who hold their ſeats during pleaſure.

Anſwer. I might in my turn, ſuppoſe leading members of turbulent diſpoſitions requiring what they expect will be oppoſed, with the view of having a ſubject for clamour; who would be of very little importance in times of tranquility, and order, whoſe ambition it is—" to ride on the whirlwind, and direct the ſtorm."

The fact, I believe, was, that both branches agreed ſo far, that if a regulation had been eſtabliſhed by an act to the extent of that agreement, the fees ſettled by the late inſpection law would have been reduced on an average, one third—I mean by the alternative extended to the planters to pay in money, or tobacco, and that a regulation of fees, according to the old tables, adopting this alternative, would have given general ſatisfaction. One branch held this to be a ſufficient diminution of fees, the other contended for a greater. The power of the judges, not having been reſtrained by the ſuperior authority of the legiſlature, remained in full force. It will not, I truſt, be directly affirmed, that the propoſition of the one branch, diſſented to by the other, has the force of a law, though ſome conſequences, drawn from the reſolves of one branch oppoſite to the ſentiments of the other, ſeem to imply an opinion, that they have ſome degree of obligatory ſanction, which they can't have, if they are not laws; for there is no medium between an obligatory declaration, or reſolve of one branch, conſtituting any rule of conduct, when the ſubject is ſuch, that the concurrence of all the branches of the legiſlature is neceſſary to eſtabliſh a compleat act, and a full compulſory law. The judges, not having been reſtrained by the proceedings of the two houſes, might, for the reaſons explained, adopt the regulation approved of by the one, and condemned by the other. The action, and re-action being equal, no force remained. Their regulation having been eſtabliſhed, it may be perpetual; but this depends upon the legiſlature: for it may be abbliſhed by a law. It is true, that the judges hold their ſeats during pleaſure, but whilſt they thus hold them, they have the legal powers annexed to their ſtations, and their ſituation is ſuch, that they rather confer a favour upon, than receive any from, government. It is even difficult to prevent their reſignation, ſo little is their dread of removal. We muſt conſider legal conſequences, on the principles of the conſtitution as it is; that it may be very much improved, I have no doubt, by altering the condition of our judges, by making them independent, and allotting them a liberal income, inſtead of a ſcanty allowance hardly ſuffi-