therefore of fixing the rates of fees, either by proclamation, or by the allowance of the judges, is a *pretended* and *false* necessity; consequently not *urgent* and *invincible*: If such a necessity really exists, when there is no legislative regulation of fees, it was foreseen in 1770, and ought to have been guarded against by passing an act of assembly for settling the rates. The *pretended* necessity therefore aggravates *their* crime, who from a mercenary motive prevented a regulation by law. The famine, which occasioned the embargo, was not a *sudden and peculiar necessity*; it was apprehended long before it was felt; parliament might have been assembled, it's advice taken, and a law passed to enable his majesty to lay the embargo. The ministers were blamed for not calling the parliament in proper time, and the *necessity* of acting against law flowing from *that neglect*, was urged as *their* accusation, not their excuse. Although the question "*whose fault* "*was it that a legislative regulation did not take place*"—be not determinable in any jurisdiction or by any legal authority, yet, has a discerning publick already decided it, and has fixed the blame on the proper person. Although he cannot be punished by the sentence of any ordinary judicature, yet might he be removed from office, on application made to the governor by the delegates of the people. Encomiums on the disinterestedness of officers, and censures of some obnoxious members, in fact, of the whole lower-house, come with peculiar propriety and decorum from a man, who is an officer, and was particularly levelled at in the spirited and patriotic resolves of that house. It might have given satisfaction to *many* to have had the regulation of the clergy and officers established on the terms once proposed by the upper-house; but this satisfaction would not have resulted from a conviction, that the terms offered were just and advantageous to the publick, but from a despair of obtaining better; if this despair should become general, the cause of the publick must yield to the interest of a few officers. Disgraceful, and afflicting reflection! Not a single instance can be selected from our history of a law favourable to liberty obtained from government, but by the unanimous, steady, and spirited conduct of the people. The great charter, the several confirmations of it, the petition of right, the bill of rights, were all the happy effects of *force* and *necessity*.

I am not surprized that Antilon's resentment should be directed against a man, who has publickly spoke some very home truths. The wit and verses borrowed from Horace cannot destroy the evidence of facts. I am restrained by the limits of this paper from descanting on the merits of tub-oratory; it has its use, and abuse, like most other institutions, and is not so prejudicial to characters attacked, as the whispered lye, the dark hint, and jesting story told with a sting at the end of it. I know a person, who has an admirable knack at defamation in this sly, oblique, insinuating manner; he has stabbed many a reputation with all the appearance of festivity *and good humour*; in the midst of gaiety, in the social hours of convivial mirth, malice preys inwardly on his soul; sometimes he is given to deal in the marvellous, to captivate the attention of his *admirers*—(generally fit tools for him to work with) and to leave on their minds a lively impression of his own consequence. Surrounded by a group of these creatures, he will now and then recount most wonderful wonders! "*Speciosa miracula*," celebrate his own feats, prowess, and hair breadth scapes, in short forge such monstrous improbabilities, as would shock the faith of the most credulous jew.

They listening, gape applause.
"Conticuere omnes, intentique ora tenebant."

Answer 6. Rules or ordinances respecting the practice of the courts may be made without any danger of prejudging questions of law. "Judges have been called upon in council to advise their sovereign *on* "*questions of law*"—true—and in consequence of their advice, pernicious measures have been frequently pursued by sovereigns—witness, the proclamation for levying ship-money, the dispensing power, and others equally unconstitutional. These examples should make judges very careful how they advise their sovereign; for bad advice they are amenable to parliament, and some of them have been punished, for giving extra-judicial and unconstitutional opinions. "Expedit reipublicæ "ut sit finis litium." "Misera est servitus, ubi jus "est vagum"—are sentiments truly liberal and useful; equally so, are these—*a free constitution will not endure discretionary powers, but in cases of the most urgent necessity. The property of Englishmen is secured by the laws, not left to depend on the will of the sovereign, or of officers appointed by him.* There is an impropriety in advising measures tending to the immediate benefit of the *advisers*. Self-interest may warp the judgment of the most upright; hence, the maxim, "no man ought "to be a judge in his own cause." The advisers of a measure as *legal* and *expedient* will probably remain of the same opinion when they come to determine on its legality in their judicial capacity. Should the question be brought before the court of appeals, ought the officers, who are deeply interested in its decision, to sit as judges? If it would be unjust in them to *judge* of the legality of the proclamation, there was surely some impropriety in *their advising* it. The chancellor, in all causes of intricacy is advised by an assistant, whose opinion would not, I presume, be asked, if interested in the suit. Should a bill be filed against the usual assistant, for instance, by a Dutchman, could he be so insensible, as not to discover some anxiety at seeing his adversary in the capacity of an adviser, directing and guiding the opinion of the judge? Would not the impropriety strike even a Dutchman? Would he not have great reason to suspect an unfavourable decree? Had there been an open rupture, a declared enmity, which still subsisted between the assistant, and one of the parties to a chancery suit, and notwithstanding the assistant should discover an inclination to act in his usual capacity, would not his conduct raise indignation in every honest mind? Reader make the application.

Answer 7. "The governor was not to be directed "by the votes of the majority of the advisers, they "having no authoritative influence"—on a former occasion we were told—"there can be no difficulty in "finding out his (the king's) ministers, the governor "and council are answerable in this character." If the governor is not to be directed by the advice of his council, why should they be answerable for their advice? He by adopting the measures advised makes it *his own*—because he uses his *own* manly judgment, the advice of the council can have no authoritative influence over him, and therefore according to Antilon's latter opinion, contradicted by his former, the governor must take the whole blame upon himself. Oh unsuspicious Eden! How long wilt thou suffer thyself to be imposed on by this deceiving man? "The fee for the seals was the same in all the proposed regulations;" and none of them have the least efficacy, wanting the sanction of law. To exact fees under the settlement of the new table, proposed by the lower-house, would be equally unlawful; though not so dangerous, as to exact them under the settlement by proclamation—"*the governor receives his fees now*"—and receives them instantly, and will not do the service without immediate payment. The practice may become general, and the good natured easy people of Maryland, will, I dare say—submit to it without reluctance or murmuring.

Answer 8. Antilon has admitted that he concurred with the rest of the council in advising the proclamation as *expedient* and *legal*—he has since justified it—as *a necessary unavoidable act*. It is not the first time that "*expediency* has covered itself under the appearance of "*necessity*."

From whence does Antilon infer this necessity? "The judgment or decree, says he, awarding the "costs must *necessarily* be *precise*"—but the judgment cannot be *precise*, unless the officers fees, which constitute part of the costs be settled; if not settled by a law, they must be settled by *some other authority*—and therefore he concludes they must be settled by proclamation—Why not by the verdict of a jury? Endless litigation, it is answered, would ensue from that method of settlement. A much greater mischief I reply—would result from the other; charges would be set, and levied on the people without, nay, against the consent of their representatives. Between two such evils, what choice have we left? The choice of the least. Hard indeed is the fate of the province to be reduced to such extremity, that *some officers* may enjoy great incomes for doing little. The secretary's office is a mere *sinecure*—yet has he had the assurance to ask a net income of £. 600 sterling per annum to *support his dignity*. To hear Antilon talk in this strain is enough to rouse the indignation of apathy itself; but indignation sinks into contempt, the moment we reflect on the *farcical dignity* of the man.

Answer 9. The fees settled by proclamation have been proved a charge upon the people; now the setting a charge upon the people without the consent of their representatives, *is a measure striking at the root of all liberty*. Antilon has endeavoured to justify the measure by precedents. The precedents he has produced do not in the least apply. The settlements of fees made by the judges appear to have been merely authentications of the *usual* and *antient* fees. The long disuse of inquiries into the conduct of officers gave them an opportunity of exacting *new* and *illegal* fees; the grievance was suffered to run on so long, that at last it became difficult to distinguish the *new* and *illegal*, from the *antient* and *legal* fees. The fees so certified by the judges, were to be deemed *antient fees*; to facilitate their scrutiny—"juries of officers and clerks "were impanelled to inquire, what fees had been "usually taken by the several officers, for the space of "30 years last past," on a supposition, I presume, that fees, which had been paid for so long a time, were probably *antient fees*.

The judges therefore, I conceive, did not settle in that instance the rates of fees, but certified what were the rates *heretofore settled*.

With us, the rates of fees were not settled: the delegates did not request the governor to issue a commission to the judges to fix the rates; they remonstrated against the apprehended exercise of the unconstitutional power of settling them by his sole authority. I hope it has been proved, that if the judges settled, that is, imposed fees, *not before settled*, they acted against law and consequently *wrong*, and therefore, "*if what has been done be wrong, it confers no right to* "*repeat it*." To establish which axiom the considerations were cited. I have known you, Antilon, long enough to form a true judgment of your character, and I have exhibited a true picture of it to the publick; an intimacy I have cautiously avoided, as dangerous, and disreputable. The frequent repetition of the word "*Barber*" in all your papers, makes me suspect some concealed wit or joke; perhaps it may be founded on the production of *your fertile invention*; pray disclose it—I will add it to the catalogue; you understand me.

Answer 10. The fees allowed to the petitioning sheriffs by an order of council of the 13th of July, 1735 had, it seems, been omitted in the proclamation issued 1733, and such fees only thus omitted as had been settled by *any act of* assembly, or *established* by any former order of council were allowed; fees allowed by such orders of council, cannot, perhaps, with strictness, be called increased fees, unless the former rates were increased, but the reasons already assigned, demonstrate they are *new fees*. Had these services, to which fees were annexed by a subsequent proclamation, been totally omitted in all former orders of council and temporary acts, would such allowance of fees have been lawful or not? If lawful, it is plain, fees would in that case have been increased, being annexed to services never before provided for—If unlawful, it should seem, that the power, which at the original creation of constitutional offices, might have annexed a fee to every service then enumerated, would be concluded, and might not annex fees to services not then enumerated, though actually performed by the officers; so that, whether an officer may lawfully receive a fee, does not depend on his doing a service, but on that service having been enumerated, and having had a fee annexed to it in the first settlement, or table of fees; but if under a right to receive fees co-eval with the institution of constitutional offices, the king or his deputies may settle fees, that is, ascertain what fee an officer shall take for doing a service, not having a settled or known fee annexed to it, then may government increase *ad libitum* the amount of officers fees. Ingenuity will point out many services performed by old officers, that have no *settled fees* annexed to them, and the right to receive *such fees* being old and constitutional; the settlement of *such*, cannot, according to Antilon's doctrine, be deemed an annexation of *new fees* to old offices.

Answer 11. "When the governor in 1692 under- "took to regulate fees, there was an act of assembly "for that purpose." The delegates did not object to the governor's undertaking to regulate fees, *because they were already regulated by law*. If that had been the real cause of the objection they would have declared it, to have precluded at once all controversy; but they objected upon this general principle—"that "it is the undoubted right of the freemen of this pro- "vince, that no officers fees ought to be imposed on "them but by the consent of the representatives in "assembly"——To which general position the *governor agreed*. The delegates produced several acts of parliament to shew, that government could not settle the fees of officers by prerogative; but if they relied on the act of assembly then in force, why did they not cite it? Where was the necessity of citing acts of parliament to prove what was already most clearly decided in their favour by a positive and subsisting law of the province?—The instances mentioned by Antilon of fees settled by proclamation prove only the actual exercise of an unlawful prerogative. The dangerous use which has so often been made of bad, should caution us against the hasty admission of even good precedents, which should always be measured by the principles of the constitution, and if found the least at variance, or inconsistent therewith, ought to be speedily abolished. "For millions entertain no other idea of the *legality* of "power, than that it is founded on the exercise of "power. (G) "There is nothing saith Swift, hath "perplexed me more than this doctrine of prece- "dents; if a job is to be done," (for instance a provision to be made for officers) "and upon searching "records, you find it hath been done before, there "will not want a lawyer (an Antilon) to justify the "legality of it, by producing his precedents, without "ever considering the motives and circumstances that "first introduced them, the necessity, or turbulence, "or iniquity of the times, *the corruption of ministers*, or "the arbitrary disposition of the prince then reign- "ing."

Answer 12. "It is not probable the fees of some "officers will in time exceed the governor's income." Such an event is most probable. The governor's fees as chancellor, fall far short of the register's fees for recording the proceedings of the court, copies of bills, &c. The register pays his deputy 40 or £. 50 a year, and pockets fees to the amount of 50,000 pounds of tobacco, discharged in money at 12/6 per hundred pounds. Except the marriage licenses, all the other branches of the the governor's revenue will probably decrease, or continue in their present state. The secretary's and commissary's fees must increase with the increase of business, the trouble and expence do not increase in proportion. The secretary has no trouble; the expence of this office is a mere trifle compared to his profits.

Having, at length waded through the argumentative part of my adversary's last paper, I am now come to the passages more immediately addressed to myself; for, Antilon still insists that I have assistants, and confederates; silly, as my productions are, he will not allow me the demerit of being single in my folly. Formerly I was accused of confidence, and self conceit, now I am represented as begging from others, the little sense contained in my last piece.

Antilon can reconcile contradictions, and expound knotty points of law, just as they may suit him.——

——————"Veniet hic de plebe togata
"Qui juris nodos, et legum ænigmata solvat."

You see, Sir, I take every opportunity of complimenting your abilities, somewhat at the expence of your integrity, I confess, but not of truth. The observation, that, an unlimited confidence in a bad minister will be assuredly abused—"*besides the merit of being* "*true*," has this further merit; *the application of it to Antilon was just*. He denies in the most direct terms the pernicious influence ascribed to him. The most notorious criminals seldomest plead guilty; the assertions of *one*, who has long ago forfeited all title to veracity, cannot be credited. I repeat the questions put to you in my last paper. Was the proclamation thought of by the whole council at the same instant? Who first advised that measure? Did you not privately instigate some member of the board to open the scene of action, while you lay lurking behind the curtain, ready to promote mischief, though unwilling to be thought the *first mover*?

Matters of a publick concern are the objects of publick disquisition. When the real advisers of a measure, from the secrecy of the transaction, are unknown, we must look to the *ostensible minister*; if the *known* character of the *man*, should perfectly correspond with the *imputed* conduct, an assurance of the truth of the accusation instantly arises in the mind, far superior to the evidence grounded solely on his denial of the fact, and his most positive asseverations of innocence, or *conse-*

(G) Vide Pen. Farmer's 11th letter. I recommend an attentive perusal of that letter to my countrymen; it abounds with judicious observations, pertinent to the present subject, and expressed with the utmost elegance, perspicuity, and strength.