houſe entered on the review and examination deſigned. The inſpection law was continued till the 20th October, to give time for it; on that review and examination the lower houſe thought the then regulation, in ſome particulars, exorbitant, and that many great abuſes had been committed by the officers in their charges, which could be palliated only from the doubtfulneſs of the expreſſion in the tables; amongſt which were charges for ſervices never performed. A bill therefore was framed including a regulation of the ſtaple, clergys dues, and lawyers fees, and new tables of officers fees, moderating the allowances, in a few inſtances, where they were thought outrageous, attempting to cut off all pretence for thoſe charges, which were thought to have been improperly made, and (not much in favour of the private gains of *ſtate* or any other lawyers) giving liberty as well to planters as others to pay off at 12/6. The bill failed, and though the planters are now ſo much obliged to government for the liberty of paying off at 12/6, a higher medium was then inſiſted on. From ſome proceedings carried on in the land office, the lower houſe ſuſpected a deſign in government to iſſue a proclamation for fees; a ſhort prorogation took place; the aſſembly met, and the bill was ſent up again; the alternative was fixed at 12/6; the clergys dues were ſettled; there was no diſpute about lawyers fees; moſt of the particulars, on which the two houſes had diſagreed in the regulation of the ſtaple, were alſo ſettled, the ſettlement of officers fees was not effected. In general, the upper houſe contended for the old tables, the lower houſe was extremely averſe to them; the inſpection law was loſt, as we apprehend, on the very point. A cautionary addreſs to the governor againſt iſſuing any proclamation for fees was prepared and delivered to him; the aſſembly broke up the 21ſt; the declaration or regulation of fees in the land office iſſued the 24th, and the proclamation the 26th November, 1770, rating the fees in tobacco diſchargeable in caſe of immediate payment in money at 12/6.

You aſk "was it or was it not for the good of the "people to be indiſcriminately allowed to diſcharge "their fees of office in caſh or tobacco at their option? "and that the planter ſhould ſtand on the ſame fair "and equal footing with the farmer and be privileged "to pay the officer his dues in money at the rate of "12/6 currency for every 100lb. of tobacco, owing by "him?" To be ſure, Sir, it is for the good of the people, that they ſhould indiſcriminately be allowed to diſcharge the fees of office in money, and common juſtice requires, that the planter ſhould ſtand on the ſame fair and equal footing with the farmer. But are the people indebted to the proclamation for it? Were the officers, after the fall of the late act for limitation of fees, intitled by any *ſubſiſting law* to charge any perſon in *tobacco*? However the great good to the people in general, and the boaſted indulgence to planters in particular, may be blown up in a looſe and curſory way, we are not apprehenſive, that you will pointedly pronounce, that independent of that proclamation the officers would have a right to recover tobacco, or any thing elſe other than money, "the "univerſal medium or common ſtandard, by com"pariſon with which the value of all merchandizes or "all ſervices may be aſcertained." When the late act expired, the fees of office, and the mode of payment eſtabliſhed thereby, fell with it; that diſparity in payment became extinct, and the planter and farmer ſtood upon an equal footing. The officers of government could only claim an equivalent in money for their ſervices, the quantum of which, in caſe of conteſt, to be conſtitutionally decided by a jury; nor would any jury upon earth, deciding upon the principles of natural juſtice, was it in their power, give a verdict, upon actions brought for ſimilar ſervices, againſt the planter for tobacco, and againſt the farmer for money, when the verdict in tobacco would perhaps double or even treble a verdict in money. No man can be alarmed with ſuch an apprehenſion. The alternative, therefore, offered in the proclamation, which you boaſt ſo much of, is an inſulting affectation of kindneſs to the people; becauſe it conveys the idea of protection to the planter, in the reſtriction of officers from tobacco demands, when in truth no ſuch tobacco demands ſubſiſted, and conſequently no ſuch protection was wanted or required. Yet ſuppoſe the officers, independent of the beneficent proclamation, would have had a right to charge and compel the planters to pay their fees in tobacco, what great alteration does the proclamation work? The eaſe of diſcharging the fees at 12/6 by either the tobacco or non-tobacco-maker is confined to the caſe of *immediate payment*: immediate payment for buſineſs tranſacted, in the times of the ſittings of the courts, is in moſt inſtances impracticable; ſo that if the planters in general feel any eaſe from the unjuſt diſtinction, they long and patiently ſubmitted to under the legal regulation, and which it ſeems according to your idea, and contrary to ours, would have been continued notwithſtanding the expiration of that regulation, it flows from the courſe of buſineſs and indulgence of the officers, and not from the tender proviſions of the proclamation.

Is the proclamation unconſtitutional in the matter of it? You attempt to prove it legal, and it ought to be proved ſo, elſe it's unconſtitutionality follows as a conſequence; for as our conſtitution is founded in compact, no authority belongs to government, but what has been granted to it; all other power reſts in thoſe, from whoſe grant all rightful power is derived. You contend for the legality, the expediency, nay the neceſſity of this proclamation, from authorities of law, the charter, the principles laid down by Mr. Locke, and the circumſtances of the province.

As to the circumſtances of the province, the true ſtate of the fact will evince that nothing can be claimed from that of the time of iſſuing the proclamation, there was no ſudden and unforeſeen emergency; a regulation of officers fees had been diſcuſſed between two branches of the legiſlature, the circumſtances of the province conſidered and deliberated on, and the old regulation refuſed by a component part to be continued; rather than continue which, the repreſentatives ſubmitted to the loſs of the regulation of the ſtaple; the ſenſe of the lower houſe againſt the meaſure was fully and conſtitutionally made known to the governor.

But you are of opinion, that a failure of juſtice would have reſulted "had not the prerogative of "proclamation happily interpoſed by the governing "power in this emergency of our province to give re"lief." Your opinion is taken up upon a ſuppoſition, that the ſeveral acts of 1715, 1716, and 1731 requiring ſecurity for the payment of officers fees, and obliging the officers to make out their accounts in a fair legible hand, could not, without the interpoſition of the proclamation, be complied with. But, pray Sir, Why not? Who queſtions the right of the officers to a compenſation for their ſervice? Why not then, in execution of the above acts, give ſecurity for the payment of that compenſation, when conſtitutionally aſcertained in caſe of a conteſt, as well as give bail in any action on the caſe where a jury are to liquidate and aſſeſs damages? And what ſhould prevent the officer from making out his demands in a fair legible hand? Perhaps you will reply to carry the above acts into execution, the fees of office ought to be legally aſcertained and reduced to a certainty by an obligatory eſtabliſhment. If ſo, then the proclamation, as to the above acts, was ineffectual and nugatory; for you contend, that the payment of the fees ſettled by it was optional in the people and not obligatory upon them, and that in caſe of conteſt the officer was obliged to take his remedy in a court of law. The payment therefore of the fees ſettled by the proclamation being aſſerted by you optional only upon the party, you would not ſurely oblige him to give ſecurity for the payment of them up to thoſe rates, before he obtains the benefit of proceſs under the above acts. This would be to tell a man, you may or may not pay, but you ſhall pay. Such mockery, Sir, will not do in the adminiſtration of juſtice. But pray, do you know of any rule of law, by which, in caſe a ſupplementary or other act refers to a prior act, either expreſſly or to the matter of it, and that prior act ſhould ceaſe in any manner, government can by proclamation revive or ſet up the expired or void act as a ground work for the operation of the ſupplementary or after act? If there is ſuch rule and the 40 per poll act void, Why might not government to carry into execution the ſupplementary laws eſtabliſh the 40 per poll act by proclamation? But there is no ſuch rule; and therefore if the above acts of aſſembly, from the want of a legal compulſory eſtabliſhment of fees, cannot be put in execution, they muſt ſtill lie dormant notwithſtanding the interpoſition of the proclamation. You ſee, Sir, in the heat of your zeal for the proclamation, you have imputed virtues to it, which upon enquiry do not exiſt.

The proclamation, you ſay was, beneficial too "in "removing all grounds of litigation and conteſt be"tween the people and officers;" and yet you affirm, "it leaves the people juſt as they were before it iſſued "as to any compulſory charge or payment to be en"forced from them:" and "leaves the officer to a "recovery of his reaſonable fee by law againſt the "people." If the people, then, are at liberty to conteſt the fees demanded of them, and the officer is to ſeek for his reaſonable claims in a court of law, how conſiſtent does the aſſertion ſtand, that the proclamation is beneficial in "removing all grounds of litiga"tion and conteſt." With propriety, Sir, you might have ſaid, that the proclamation defeats a legal beneficial conſequence of litigation; the officers, who adviſed it, well knew, that their extravagant charges under the old table would not bear examination before a jury. They foreſaw, that a ſingle verdict might determine the exiſtence of their commiſſions; for an officer convicted of extortion is puniſhable by law with fine, impriſonment, and removal from office. The ſafety, therefore, of their commiſſions and the laudable principle of ſelf-intereſt, may have prompted them to put his excellency upon the project of a proclamation to countenance the exaction of fees according to the practices under the old table. Shielded by ſuch proclamation, what would avail an indictment for extortion? The officer would naturally ſollicit a noli proſequi, could the governor deny it? By an aſſumed authority, he warranted the exaction; with what conſiſtency then could he withhold the means to prevent the puniſhment which the law inflicts:

You ſtumble upon a *reſolve*, which ſeems to give you offence, "that in all caſes where no fees are eſta"bliſhed by law for ſervices done by the officers, the "power of aſcertaining the quantum of the reward is "conſtitutionally in a jury upon the action of the "party." Is this, Sir, law or is it not? If it is law, there is an end of the queſtion. And pray Sir, which is the better ſafeguard againſt the evils and oppreſſions of office, the trial by jury or a proclamation? But the trial by jury, you obſerve, "would multiply law "ſuits" in the community. What would you infer from this? Are you of opinion, that government, under pretence of preventing law ſuits, has a right to ſnatch the deciſion of property from the courts of juſtice and aboliſh the trial by jury? You will not ſurely draw ſuch an inference. "The people and "officers (you ſay) will be left open to perpetual con"teſt about the rate of fees." We think not; a verdict or two would ſilence the moſt refractory; a jury you know, in the aſſeſſment of damages, may make an officer ſmart for his obſtinacy and perſeverance. But to multiply ſuits you aſſert is "greatly to the ad"vantage of our ſtate lawyers who puſhed forward "this publick reſolve for the promotion of their own "private gains." This is a harſh imputation. The gentlemen, you allude to, are as uncorrupt in their publick character as yourſelf. You cannot ſuggeſt a circumſtance to found even a ſuſpicion upon, that they were ever actuated in their publick conduct by ſuch a diſhonourable motive. The man, who fills a publick ſtation ought to act upon impartial, liberal and diſintereſted principles; if he is pliant enough to be borne down by a *bribe* or ſwayed by *private intereſt*, he certainly is a baſe, treacherous and unworthy ſervant. If you have any proofs of your charge, ſo materially affecting the integrity of the gentlemen alluded to, diſcloſe them to the publick. Fix the imputed guilt and mankind will abhor and deteſt them. The "ſtate lawyers," as you are pleaſed to ſtile them, ſo far from entertaining any hopes of promoting their private gains from perpetual conteſts between the people and officers, have often and repeatedly offered their aſſiſtance in the courts of juſtice without any ſatisfaction or reward for it. In the ſeveral ſuits reſpecting clergys dues, they have voluntarily appeared on the behalf of the people and refuſed very liberal fees, which the parties intereſted have generouſly preſſed their acceptance of. When, Sir, they withdraw their promiſed aſſiſtance and will not act without a reward or ſatisfaction, you may then upbraid them with mercenary motives, and impute their publick conduct to ſelf intereſt.

You highly extol the *amiable* motive of the proclamation to prevent extortion in the exaction of fees beyond the old table ſet up and eſtabliſhed by it. You ſeem to have forgot, that the complaints of the people are pointed at the table itſelf; the oppreſſions of office, from whence ariſes the oppoſition, are founded upon the colourable exactions of fees under it. Inſtead of aiding the popular ſtruggle againſt the oppreſſions of office, the proclamation eſpouſes the cauſe of the officers, and adds its weight to ſink down the people. What do the officers contend for? The old table of fees—What do the people object to as oppreſſive and unjuſt? The old table of fees and the abuſes, which had been practiſed under colour of it. What is the regulation eſtabliſhed by the proclamation? The old table of fees. And what is the practice under it? A continuance of the abuſes. What, then, was the *real object* and *intention* of the proclamation? Was it, the *publick good* or the *emolument* of the officers? And yet in the energetick words of the poet you ſay

"It's deſert ſpeaks 'loud, and I ſhould wrong it
"To lock it in the wards of *covert boſom*,
"When it deſerves with characters of braſs
"A forted reſidence, 'gainſt the tooth of time
"And razure of oblivion."——

——Had you really intended a *burleſque* upon the proclamation, you could not have been more happy in a pointed quotation——

"And would the ſilence of the governor &c. have "been productive of the ſame good effects to the peo"ple as his proclamation &c. and which reſtrained "&c. at a time when the old inſpection law that con"tained the rates of fees had expired among us; at a "time when from an unhappy diſagreement between "two of the component branches of our legiſlature "no new table of fees could be ſettled by them; at a "time when in conſequence of this defect in govern"ment and through want of *reſtriction of ſome poſitive* "*law*, the officers were *left at large to riot* with the "property and purſes of every man, that might have "occaſion to do buſineſs in their offices." We have been full in this extract; ſuch a diſplay of legal knowledge is wonderful indeed! But "you would be "gladly informed what other mode of checking thoſe "evils hath the conſtitution of our mother country or "that of our province provided, ſave only that *by pro*"*clamation?*" The law, Sir, replies—a *JURY*. Do you not know, that an officer who riots with the property and purſes of every man, that has buſineſs to do in his office, may by the common law be puniſhed on an indictment for ſuch oppreſſion and extortion; and that the party grieved is entitled to his action to recover back his property, that has been thus wreſted from him? And would not a jury, upon evidence of ſuch riot, compel an officer to diſgorge by an exemplary verdict of damages? Or if the deſigned extortion was not ſubmitted to and a reaſonable reward was tendered and the buſineſs remained undone, do you not know, that an action might be eaſily maintained for the recovery of damages? Theſe, Sir, are the checks which the conſtitution has appointed upon the evils of office; theſe are the conſtitutional guards againſt extortion and oppreſſion.

It is inconſiſtent in your argument to ground your juſtification of the proclamation on a *neceſſity* for the interpoſition of government to regulate fees from the peculiar juncture and ſtate of the province, and at the ſame time contend the proclamation is a *legal act*, and the exerciſe of a *legal prerogative*. If it is a *legal act*, and the exerciſe of a *legal prerogative*, it needs no juſtification or excuſe; it defends itſelf, and is within the protection of the poſitive laws of the land, and conſequently the neceſſity communicates no authority. "The preſervation, ſafety and good of the people, "can beſt, nay only be effected and preſerved by main"taining unrelaxed and un-nervated the fundamen"tals of the conſtitution, and as one of the principal "of them, to exclude from the executive, every even "the leaſt degree of legiſlative power, the natural and "neceſſary tendency of which, is to deſtroy the con"ſtitution, and of conſequence to deſtroy the ſafety of "the people." If *neceſſity* is relied on to juſtify the exerciſe of a power, which muſt be confeſſed would otherwiſe be illegal, that *neceſſity* ought clearly to be *certain*, *urgent* and *invincible*; ſuch when the ſupreme authority could not be aſſembled and conſulted time enough to afford a remedy. It then becomes an inſtantaneous act of ſelf defence *at riſk*; ſo far from its being ſolely appropriated to the *ſupreme magiſtrati*, it is not confined to *magiſtracy* at all; any *private* perſon may equally at *his riſk* ſave the ſtate.

But the *neceſſity* for any further remedy or proviſion to prevent a failure of juſtice, to which our conſtitution is utterly abhorrent, according to you, and every publick advocate for the proclamation, aroſe from the ill conduct of the *repreſentative body*. Admit for argument ſake, that the law had no adequate proviſion, and that for the prevention of a failure of juſtice, a further remedy was abſolutely neceſſary; admit too for argument ſake, that the repreſentatives were as blame-