by a *bribe* or ſwayed by *private intereſt*, he
a baſe, treacherous and unworthy ſervant.
any proofs of your charge, ſo materially
e integrity of the gentlemen alluded to,
m. to the publick. Fix the imputed guilt
nd will abhor and deteſt them. The
yers," as you are pleaſed to ſtile them, ſo
tertaining any hopes of promoting their
s from perpetual conteſts between the peo-
ficers, have often and repeatedly offered
nce in the courts of juſtice without any fa-
r reward for it. In the ſeveral ſuits re-
rgys dues, they have voluntarily appeared
alf of the people and refuſed very liberal
n the parties intereſted have generouſly
r acceptance of. When, Sir, they with-
promiſed aſſiſtance and will not act without
ſatisfaction, you may then upbraid them
enary motives, and impute their publick
ſelf intereſt.

nly extol the *amiable* motive of the procla-
prevent extortion in the exaction of fees
old table ſet up and eſtabliſhed by it. You
ve forgot, that the complaints of the people
l at the table itſelf; the oppreſſions of office,
ce ariſes the oppoſition, are founded upon
able exactions of fees under it. Inſtead of
popular ſtruggle againſt the oppreſſions of
proclamation eſpouſes the cauſe of the
d adds its weight to ſink down the people.
he officers contend for? The old table of
t do the people object to as oppreſſive and
he old table of fees and the abuſes, which
practiſed under colour of it. What is the
eſtabliſhed by the proclamation? The old
es. And what is the practice under it?
ance of the abuſes. What, then, was the
and *intention* of the proclamation? Was it,
good or the *emolument* of the officers? And
energetick words of the poet you ſay

eſert ſpeaks 'loud, and I ſhould wrong it
ock it in the wards of *covert boſom*,
n it deſerves with characters of braſs
rted reſidence, 'gainſt the tooth of time
razure of oblivion."——

you really intended a *burleſque* upon the pro-
, you could not have been more happy in a
uctation——
would the ſilence of the governor &c. have
roductive of the ſame good effects to the peo-
his proclamation &c. and which reſtrained
a time when the old inſpection law that con-
the rates of fees had expired among us; at a
hen from an unhappy diſagreement between
the component branches of our legiſlature
v table of fees could be ſettled by them; at a
hen in conſequence of this defect in govern-
nd through want of *reſtriction of ſome poſitive*
he officers were *left at large to riot* with the
ty and purſes of every man, that might have
n to do buſineſs in their offices." We have
l in this extract; ſuch a diſplay of legal
ge is wonderful indeed! But "you would be
informed what other mode of checking thoſe
nath the conſtitution of our mother country or
f our province provided, ſave only that *by pro-*
ion?" The law, Sir, replies—a *JURY*. Do you
w, that an officer who riots with the property
es of every man, that has buſineſs to do in
, may by the common law be puniſhed on an
nt for ſuch oppreſſion and extortion; and that
y grieved is entitled to his action to recover
property, that has been thus wreſted from
nd would not a jury, upon evidence of ſuch
mpel an officer to diſgorge by an exemplary
of damages? Or if the deſigned extortion was
nitted to and a reaſonable reward was tendered
buſineſs remained undone, do you not know,
action might be eaſily maintained for the reco-
damages? Theſe, Sir, are the checks which
ſtitution has appointed upon the evils of office;
e the conſtitutional guards againſt extortion
preſſion.

inconſiſtent in your argument to ground your
tion of the proclamation on a *neceſſity* for the
ſition of government to regulate fees from the
r juncture and ſtate of the province, and at the
ne contend the proclamation is a *legal act*, and
rciſe of a *legal prerogative*. If it is a *legal act*,
exerciſe of a *legal prerogative*, it needs no juſti-
or excuſe; it defends itſelf, and is within the
ion of the poſitive laws of the land, and conſe-
the neceſſity communicates no authority.
preſervation, ſafety and good of the people,
beſt, nay only be effected and preſerved by main-
ng unrelaxed and un-nervated the fundamen-
of the conſtitution, and as one of the principal
hem, to exclude from the executive, every even
ealt degree of legiſlative power, the natural and
ſſary tendency of which, is to deſtroy the con-
tion, and of conſequence to deſtroy the ſafety of
people." If *neceſſity* is relied on to juſtify the ex-
of a power, which muſt be confeſſed would
wiſe be illegal, that *neceſſity* ought clearly to be
, *urgent* and *invincible*; ſuch when the ſupreme
rity could not be aſſembled and conſulted time
h to afford a remedy. It then becomes an in-
neous act of ſelf defence *at riſk*; ſo far from its
ſolely appropriated to the *ſupreme magiſtrate*, it
confined to *magiſtracy* at all; any *private* perſon
qually at *his riſk* ſave the ſtate.
the *neceſſity* for any further remedy or proviſion
vent a failure of juſtice, to which our conſtitu-
utterly abhorrent, according to you, and every
k advocate for the proclamation, aroſe from the
nduct of the *repreſentative body*. Admit for ar-
nt ſake, that the law had no adequate proviſion,
that for the prevention of a failure of juſtice, a
r remedy was abſolutely neceſſary; admit too for
ment ſake, that the repreſentatives were as blame-

able, as you fancy them, and were the ſole, intentional and wicked occaſion of that *neceſſity*, it is very inconcluſive, that therefore government might eſtabliſh the remedy, which the *legiſlature* ought to have eſtabliſhed, and the *lower houſe* prevented. Our conſtitution provides or allows a remedy, when either branch of the legiſlature acts in direct oppoſition to the ends and purpoſes of their creation; in ſuch unnatural event, the power again flows back into the hands of the people. If the *ſupreme magiſtrate* acts, as king James did, a precedent is ſet, which ought to be imitated. If the *repreſentative body* ſhould act in direct oppoſition to the ends and purpoſes of their creation, the remedy is by a *diſſolution*, which is properly and for that purpoſe intruſted with prerogative; the power flows back again into the hands of the people to be exerciſed in a new choice, but *they* and *only they* are ultimate and concluſive *judges* of the propriety of the conduct of their *repreſentatives*. There is nothing in the caſe, as ſtated by yourſelf, unforeſeen or unprovided for by our conſtitution; and government would be as well juſtified for having hanged a ſubject *by proclamation* after an acquittal by a jury for murder, *againſt the duty of the jury*, as government can be juſtified by making a *neceſſary eſtabliſhment* by *proclamation*, becauſe the *repreſentatives againſt their duty* refuſed to concur in enacting that *neceſſary eſtabliſhment*. But the people, the ultimate and concluſive *judges* of the propriety of the conduct of their *repreſentatives*, have approved their conduct by *two ſeveral re-elections*. What weight, then, have the people in the conſtitution, which ought as the firſt principle of it to be kept on a juſt balance and equipoiſe, if *that* ſhall be enacted by *prerogative*, on the foundation of *neceſſity*, in the enaction of *which* they deliberately refuſe to concur?

If the ſuppoſed neceſſity is to juſtify the proclamation, who is to be judge of the neceſſity? if the ſupreme magiſtrate is to be judge, the power is unlimitted, and then the diſcretion of prerogative may apply it to any inſtance whatever; "and ſo diſcretion degenerates into deſpotiſm."

As to your *legal authorities*, we agree your caſes, except that in Hob. are ſound law, and hold with the principles laid down by Mr. Locke; yet we think you have miſtaken and miſapplied thoſe great authorities. You marvel much that the right of prerogative to prevent extortion ſhould be queſtioned or doubted. No man, Sir, queſtions or doubts the right of prerogative *in a legal way* to prevent extortion; but the queſtion ſtill recurs, is the proclamation in diſpute a legal way or not? it is the right of prerogative to admoniſh the ſubject by *proclamation* againſt the breach of *ſubſiſting laws*; but every man "of common juridical knowledge," denies any right of prerogative to eſtabliſh what is, and what is not extortion, or to give the rule, or fix the ſtandard for the fees of office, beyond which is, and within which is not, extortion. Had there been any *ſubſiſting law* of the province regulating the fees of office, a proclamation forbidding the officers to exact beyond ſuch *legal eſtabliſhment*, and admoniſhing them to an obſervance of ſuch *ſubſiſting law*, would have been a conſtitutional exerciſe of *legal prerogative*; or in the now circumſtances of the province, a proclamation, forbidding the officers to exact *unreaſonable* or *exorbitant* fees for ſervices actually performed by them, or any money or other valuable thing, under colour of office, for ſervices not actually performed, would likewiſe have been a conſtitutional exerciſe of *legal prerogative*; but when no law ſubſiſts for the regulation of fees, when no law allows any other than a juſt compenſation for the ſervice, a *jury alone* can legally and conſtitutionally aſcertain the quantum; and what is, or what is not extortion, conſequently reſts with them.

"My lord Coke (you ſay) obſerves, that proclamations are of great force, which are grounded on the laws of the realm, for although the king by his proclamation or otherwiſe, cannot change any part of the common law, or ſtatute law, or the cuſtoms of the realm, nor create any offence by his prohibition or proclamation, which was not an offence before (that being to alter the law of the land) yet he may prohibit by his proclamation a thing, which is puniſhable by the law, by fine or impriſonment, and that as a circumſtance may aggravate the offence." A proclamation then is of no force, which is not grounded upon ſome law. Pray, Sir, what law is the proclamation in queſtion grounded upon? what law does it ratify or confirm or admoniſh the officers to an obſervance of, in reſtricting them from exacting fees beyond the old table? we know of no ſuch law ſince the expiration of the late act of aſſembly, which eſtabliſhed that table—"Although continues the ſage, "the king by his proclamation or otherwiſe, "cannot change any part of the common law, &c." at common law, the exaction of fees for ſervices never rendered, under colour of office, is extortion. Did you not know, that the ſecretary, under the old table, charged for recording proceedings which were not, nor need be recorded? and that the commiſſary-general charged for letters of adminiſtration which he never granted? theſe charges are infractions of the common law, for as much as they fall within the deſcription of common law extortion, which is "the taking money, under colour of office, which is not due, or more than is due, or before it is due," and ſurely the exaction of fees for ſervices never performed comes fully within the definition. If the old regulation warranted the uſual charges of fees as contended for by the upper houſe for ſervices never performed, does not the proclamation "change the common law" by eſtabliſhing the old table for a ſtandard, and giving a ſanction to exactions which the common law forbids, and puniſhes as extortion? but to engage our attention you give us in capitals, what your great author further obſerves; "the king may prohibit by his proclamation a thing which is puniſhable by the law, with fine and impriſonment, and that as a circumſtance may aggravate the offence." To apply this obſervation in defence of the proclamation, you muſt admit ſome *pre-exiſting offence* puniſhable by ſome *pre-exiſting law*, with fine and impriſonment, which the proclamation in aid of the *pre-exiſting law* was iſſued to prevent, by an aggravation of ſuch offence. What offence, Sir, does the proclamation in queſtion, in your idea of it, allude to and affect to prevent? doubtleſs the offence of extortion at common law. But what is extortion at common law? the exaction of fees for ſervices never rendered, &c. Is the proclamation in queſtion calculated to enforce the common law in the prevention of ſuch exaction and extortion? advert to the old table of fees eſtabliſhed by the proclamation and the colourable practices under it, and affirm the fact if you can. The proclamation inſtead of aiding the common law in the prevention of ſuch extortion, by an aggravation of the offence, aims in fact to wipe out the offence, and pluck away the puniſhment by an authoritative allowance of the exaction.

Captivated by the ſpecious pretence of the proclamation "to prevent extortions and oppreſſions," you haſtily formed your judgment upon that circumſtance alone, without reflecting, that what is extortion or not, muſt be aſcertained by ſome *pre-exiſting law*, or left to the deciſion of a jury, and could not be *created, bounded* or *defined* by the proclamation itſelf in the eſtabliſhment of a ſtandard; and yet it is "paſſing "ſtrange," the law caſes cited by yourſelf did not open your eyes and bring you to reflection.

But here you ſay; "you would proceed on the "grounds and authorities of law above adduced, to "conſider the conſtitutional nature and legal effect of "a proclamation, to enforce an antient or prior ſub-"ſiſting law againſt oppreſſion and extortion in the "various departments of office, &c. &c." After, Sir, you had evinced the right of the proprietary, generally, to iſſue proclamations, which are grounded upon ancient or prior ſubſiſting laws, and calculated to enforce them, how comes it to paſs that you forgot to point out to the publick, *what ancient or prior ſubſiſting law* againſt extortion and oppreſſion in the various departments of office, the proclamation in queſtion was grounded upon, or calculated to enforce? to beg the point in queſtion is not admiſſible in argument. Turn over again your law books and our acts of aſſembly, and be pleaſed to furniſh us with *this ancient or prior ſubſiſting law* eſtabliſhing the rates of the late regulation: do this, and every man of "common juridical "knowledge" will admit the legality of the proclamation.

But you go on "if oppreſſion and extortion are "offences puniſhable by the laws of the land, and that "they are, the law books ſpeak aloud, and too fre-"quent experience ſadly evince, then I have no doubt "in declaring my opinion that a proclamation proh-"biting theſe offences, being grounded as the "Lord Coke ſaith on the laws of the land or "as Judge Blackſtone expreſſeth it, being made to "enforce a prior ſubſiſting law among us againſt "theſe offences is conſtitutional, legal, beneficial to "the people, and obligatory to all intents and pur-"poſes upon ſuch as are the objects of it, and conſe-"quently that the governor's proclamation being "iſſued for theſe purpoſes, and grounded on the "actual exiſting laws of the land, is with reſpect to "the officers &c. conſtitutional, legal, and benefi-"cial." If, which is true, oppreſſion and extortion are offences puniſhable by the laws of the land, with what conſiſtency can you aſſert, that on the fall of the late regulation, "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." Thus are you obliged to make out the *legality* of the proclamation on a *pre-exiſting law againſt oppreſſion and extortion*, and to make out the *expediency* and *neceſſity* of the ſame proclamation, "through want of the reſtriction of *ſome poſitive law*, whereby the officers were *left at large* to riot with the property and purſes of every man, &c." We grant, Sir, that oppreſſion and extortion are offences puniſhable by the law of the land; but we deny that the proclamation is grounded upon the law. The law of the land, which forbids oppreſſion and extortion, is the common law. What is it, that perſuades you to think, that the proclamation is grounded upon the common law, and calculated to ratify, confirm or enforce it? You have nothing to urge but the *bare recital* of the proclamation itſelf, "to prevent oppreſſions and extortions." But the pageantry of the recital is no evidence of the truth of your propoſition. What the proclamation *enacts, authoriſes* and *eſtabliſhes*, muſt rule the determination of the preſent queſtion. If the proclamation *enacts, authoriſes* and *eſtabliſhes*, what the common law *enacts, authoriſes* and *eſtabliſhes*, then indeed, "being grounded, as lord Coke ſaith, on the laws of the land," or as judge Blackſtone expreſſeth it, "being made to enforce a prior ſubſiſting law," it is conſtitutional and legal; but if it *enacts, authoriſes* and *eſtabliſhes*, what the common law does not *enact, authoriſe* and *eſtabliſh*, then Sir, not "being grounded, as lord Coke ſaith, on the laws of the land," or as judge Blackſtone expreſſeth it, not "being made to enforce a prior ſubſiſting law," it is unconſtitutional and illegal. Is the enacting and ſubſtantial part of the proclamation then grounded upon the common law of the land, and calculated to ratify, confirm and enforce it? mark, Sir, the diverſity between them. The proclamation eſtabliſhes the *old table* of fees; the common law of the land knows of no *ſuch table*: the proclamation ſets it up as the *ſtandard* for the fees of office, and aſſumes the authority to *define* and *aſcertain* that only to be extortion, which exceeds ſuch ſtandard; the common law has no other ſtandard than *natural juſtice*, and ſubmits the queſtion, of extortion, or not, to the deciſion of a jury; the proclamation by an eſtabliſhment of the *old table*, gives a ſanction to exactions for ſervices never rendered; the common law prohibits ſuch exactions, and puniſhes them as extortion. Thus, Sir, you find, that the proclamation inſtead of preventing the extortions and oppreſſions which the common law forbids, or treading in the ſteps of the common law, prevents only thoſe extortions and oppreſſions, which his lordſhip's council, compoſed partly of the *officers themſelves*, have been *graciouſly* pleaſed to *admit, define* and *aſcertain* as ſuch; and thus you find, that inſtead of ſtrengthning the common law, by keeping unimpaired and inviolate the conſtitutional power of a jury to aſcertain the quantum for a ſervice done in caſe of conteſt, where no law ſubſiſts for a regulation of fees, the proclamation over-rules the common law, ſnatches this conſtitutional power from a jury, and *complaiſantly* gives it to the *officers themſelves*; and thus you find the *officers* by this governmental act are made *judges and parties*, in ſubverſion of every principle of law, policy and juſtice. With what truth or propriety, then, can you affirm, that the proclamation in queſtion is grounded upon the common law, and calculated to ratify, confirm and enforce it? If you ſhould, as we imagine you will, think yourſelf *conſtrained* again to appear in print, we ſhall be obliged to you pointedly to anſwer, whether if no proclamation had iſſued, there could not have been a conviction for extortion? if there could not, whether there now can be any ſuch conviction? and if there can, whether the crime will conſiſt in the exceſs above the rates allowed by the proclamation, or beyond the juſt proportion and merit of the ſervice? all our ſages of the law require "an ancient or prior ſubſiſting law" to found a proclamation upon; for tho' the thing prohibited or commanded by the proclamation, is prohibited or commanded by ſuch ancient or prior ſubſiſting law, yet the proclamation is a circumſtance which aggravates the breach of it; becauſe it appriſes the ſubject of ſuch law, and admoniſhes him to an obſervance of it. Grounded upon ſuch a law, a proclamation is legal and conſtitutional; not grounded upon ſuch a law, it is illegal and unconſtitutional. Wherefore, as the proclamation in queſtion was founded upon no *ſubſiſting law* for the eſtabliſhment of the old table of fees, and of conſequence not calculated to ratify, confirm and enforce ſuch *ſubſiſting law*, it was an act of uſurpation, and lawleſs.

Permit us to make a ſhort recapitulation of your arguments ſo far as we have already conſidered them. —The proclamation you have argued, was founded upon the law of the land, and calculated to enforce it; —becauſe the law of the land knows of no ſuch table as is eſtabliſhed by it, and prohibits exactions for ſervices never rendered, which the proclamation authoriſes and gives a ſanction to.—The proclamation you have argued, was iſſued to prevent extortion and oppreſſion; —becauſe it eſtabliſhes the old table of fees rejected by two different aſſemblies, as fraught with oppreſſion, allows the officer to charge according to that table and countenances the practices under it.—The proclamation you have argued was manifeſtly calculated to promote the intereſts of the people;—becauſe it gave the alternative to pay in tobacco or money, when the proclamation allows the people the alternative only in caſe of *immediate payment*, and without the proclamation the people were entitled to pay in money, and under no obligation to pay in tobacco.—The proclamation, you have argued, was beneficial in preventing conteſt about fees;—becauſe the payment of the fees eſtabliſhed by it, you aſſert, was optional in the people and the officer obliged, in caſe of conteſt to ſeek his remedy in a court of law.—The proclamation you have argued was the *only* conſtitutional mode of checking oppreſſion and extortion by officers;—becauſe, you allow, oppreſſion and extortion are puniſhable by the laws of the land.

Having remarked thus far on your authorities, We proceed now to take notice of your arguments deduced from the charter, Mr. Locke and the caſe in Hobart.

You have diſplayed great abilities, to be ſure, in your deduction of the prerogatives of the crown to the lord proprietary through the channel of his lordſhip's charter. That the lord proprietary with reſpect to the powers of government ſtands here in loco regis, we ſhall not controvert; but we deny the crown poſſeſſes the prerogative, which your complaiſance would give to his lordſhip; and what the crown had not, the crown could not grant.

"Fees, you ſay, being incidental to, or as ſome "chooſe to call them, the perquiſites of, office, are "conſtitutionally and properly rateable only by the "ſame, or like authority, that eſtabliſhed the office "and appointed the officer." The appointment of officers is conſtitutionally in the king and by his grant transferred to the proprietor. The eſtabliſhment of offices is a matter of a good deal of conſequence to the ſubject; thoſe which are old and known to the conſtitution cannot be altered, let their original eſtabliſhment or modification have been by what authority ſoever; but we apprehend no authority leſs than the legiſlative can eſtabliſh a new office in ſuch manner as to create any charge, burthen, or trouble to the ſubject. Yet if fees are conſtitutionally and properly rateable only by his lordſhip, or his governor, then by his proclamation he may conſtitutionally enforce the payment of them; becauſe it is an abſurdity in terms, that his lordſhip ſhould poſſeſs a conſtitutional power, which he cannot conſtitutionally exerciſe to affect and bind the people. If this, Sir, is your idea of prerogative, how uncandid was the attempt to lull our fears by confident aſſertions, that the people "are not, nor could be affected by the proclamation" in the eſtabliſhment of fees! And when you are pleaſed to affirm this conſtitutional power in his lordſhip to rate the fees of office, and we add, as a conſequence, to enforce a payment, for a conſtitutional power to rate implies a conſtitutional power to enforce, the fees rated being a dead letter unleſs obligatory upon the people, was it not extremely unkind in you, when ſo much depended upon the point, to withhold your authorities from us and to give us only your *naked aſſertion?*

No fees originally were demandable of the ſubject. The king paid the officers out of his own revenues. While the charges and expences of the adminiſtration of juſtice were defrayed by the king out of his own