pocket, no doubt he had naturally a right to fix and aſcertain the fees of his officers; for ſurely the king might *give* and *grant* his own property to *whom*, and in what *proportion* he pleaſed. But when this mode of defraying the charges and expences of office, reſulting from the publick adminiſtration of juſtice, had declined, and fees were exacted of the ſubject in lieu of it, this right in the king to rate and eſtabliſh the fees of office ceaſed and determined; becauſe the king cannot *give* and *grant* the property of his ſubjects to *whom* and in what *proportion* he pleaſes.

You obſerve, that it hath been objected againſt the proclamation, that it doth eſtabliſh a tax upon the people; this you deny, and contend, that fees and taxes are two very different things——In ſupport of the objection againſt the proclamation, lord Coke's obſervations on the ſtatute de tallagio non concedendo were adduced; although it was incumbent on thoſe who maintain the affirmative, to prove their propoſition, yet after authority had been brought as proof, it was equally incumbent on you to ſhew ſome defect in that authority; you have taken a ſhort way, by denying the propoſition without taking any notice of the authority adduced in ſupport of it. But fees, you ſay, are not taxes, becauſe "the right to demand them may evidently exiſt prior to the rate or regulation of the quantum;" ſo has every publick creditor, before the rate to raiſe a tax, wherewith to pay him, is ſet, a right to be ſatisfied for his ſervices performed for the publick, and in very many inſtances before the quantum due to him is aſcertained—It is not the *right* of either the officer or publick creditor, which creates the tax, but the *rating* on the ſubject—But fees you ſay "may originate and ſubſiſt exclusive of any legiſlative authority to impoſe, or grant them, which is eſſential to taxation." Do you mean, Sir, that ALL fees may originate? &c. if you do, be pleaſed to adduce your proof. If you mean that *ſome* fees may originate, &c. be pleaſed to point *them* out, and the authority by which they may originate and ſubſiſt; your poſition may perhaps then ſtand harmleſs enough—Fees, you ſay, are "conſtitutionally and properly rateable only by the ſame or like authority that eſtabliſhed the office and appointed the officer." The aſſertion is poſitive enough, but wants proof. But taxes, you ſay, are "certain portions of property which individuals pay *into the hands of the publick* for the *publick's ſervices*." Into whoſe hands certain portions of property are paid makes no conſtituent difference; the tonnage is not the leſs a tax, or a leſs grievous one, becauſe paid into the hands of the proprietor for *his own private uſe*; nor would it be, if paid into the hands of any officer, or A. B. a mere private perſon for his own private uſe, either for publick ſervices or for nothing at all—Fees you ſay, are "certain *rewards*, which the officer is entitled to of *ſome individuals*, to his own or anothers private uſe"—You might have ſaid *of every individual* for whom ſervices are done in the execution of office. The uſe money may be applied to after receipt from the ſubject makes no difference, in one ſenſe the money paid to an officer *as fees* may be ſaid to be paid for a publick uſe——the ſupport of publick offices neceſſary for the adminiſtration of juſtice; and in this light very genteel ſalaries are contended for. The money collected from the ſubject by any kind of tax, and diſtributed to the ſoldier or other ſervant of the publick, when it comes to his hands, is as much his property as the fees of office, when received, is that of the officer, who receives it; and in this ſenſe may be equally ſaid to be for his *private uſe*. It makes no difference to the ſubject, nor makes it be, or ceaſe to be, a tax, whether the money goes immediately to the officer or paſſes through intermediate hands to reach him; whether the officer is intitled to the whole without diviſion, or to a part only on diſtribution——ſuppoſe the propoſal once made by the upper houſe had taken effect, and the ſecretary, commiſſary, and judges of the land office had each been allowed a certain yearly ſalary to be paid by the publick, and the fees of thoſe offices had been collected by the officers of the publick, and made one ſtock or fund, out of which to pay and diſtribute thoſe ſalaries, would the fees then have been taxes or not? they would have been *certain portions of property which individuals would have paid into the hands of the publick for the publick's ſervices* and would have fallen preciſely within *your* definition of a tax——indeed the portion or quantity of property, any individual muſt have paid, would have depended on what ſervices were performed for him, in like manner as the portion or quantity of property, an individual muſt pay under a tax on candles or the like, depends on the quantity of ſuch articles, which he conſumes——you go on further to diſtinguiſh "fees "when *certain* are ſuable for and recoverable by proceſs of indebitatus aſſumpſit, when *uncertain* by "quantum meruit; but neither of theſe proceſſes will "lie for the recovery of taxes, the payment of theſe "is generally compelled by diſtreſs or execution pro"vided by the law which gives the tax." What avails, Sir, the diverſity of proceſs? Becauſe the payment of taxes is *generally* compelled by diſtreſs or execution provided by the law, which gives the tax, is it therefore neceſſary, that ſuch or any other mode ſhould be provided by the law, which gives the tax, to compel payment thereof, in order to make it *properly* a tax? If no mode whatever was provided by the law, which gave a tax, to compel payment thereof, would not the common law ſupply a mode to compel a payment of it? Moſt certainly it would; yet if becauſe the payment of taxes is *generally* compelled by diſtreſs or execution provided by the law, which gives the tax, it is therefore a neceſſary conſtituent part to create ſuch tax, that the payment thereof ſhould be compelled by diſtreſs or execution, it would ſeem as fairly to follow that, becauſe the payment of fees hath been *generally* compelled by diſtreſs or execution provided by the laws, which rated and eſtabliſhed them; it is equally a neceſſary and conſtituent part to rate and eſtabliſh fees, that the payment ſhould be compelled by diſtreſs or execution, provided by the law which gives them; the power of compelling which payment by diſtreſs or execution, we preſume, you will not deny, reſts in the legiſlature only. If the diſtreſs or execution to enforce payment is an infallible mark of taxes, then diſtreſs or execution of both being generally given by the acts, which regulated fees, to enforce payment of them, they are from thence proved properly taxes. That a quantum meruit lies for an officer,, on which he may recover a juſt ſatisfaction to be aſcertained by a jury for his ſervices, hath always been admitted, but concludes nothing for you to the point in queſtion—the *right to a compenſation* was never contended to be a TAX, but *the rating and eſtabliſhing fees* by legal authority cloſes the mouth of the party as to the quantum, precludes all conteſt about it, and a fee thus rated is effectually and eſſentially a tax—you maintain that fees are not taxes, we maintain that the very fees rated and eſtabliſhed by the proclamation are taxes; you have adduced your reaſons why fees are not taxes, we have run into ſome prolixity to ſhew they are; we are not diſputing about *words* but *things*. Fees are *tallages*, *taxes*, *burthens*, or *charges*—If they are either of theſe, it muſt ſtand agreed on all hands, that the rating and eſtabliſhment of them belongs properly to the legiſlature only, and iſſuing the proclamation was an illegal aſſumption of power—Let us then ſee, whoſe reaſoning is beſt ſupported by legal authority; the ſtatute de tallagio non concedendo, ſpeaking as antient ſtatutes frequently do in the perſon of the king, ſays "*nullum tallagium* vel *auxilium*, &c."

On which my lord Coke obſerves, "theſe words are plain without any ſcruple, abſolute without any ſaving. And this is as much as to ſay, that no ſubſidy, taſk, tenth, fifteenth, impoſition or other aid or charge whatſoever, ſhall by the king or his heirs, be put or levied without the common council of the realm; that is to ſay, by grant and common aſſent in parliament. Within this act are all new offices erected with new fees, *or old offices with new fees*, for that is a tallage put upon the ſubject, which cannot be done without common aſſent by act of parliament, &c. ſo all tallages, burthens or charges put upon the ſubject by the king, either to or for *the king*, or to or for *any ſubject* by the king's letters patents, or other commandment or order, are prohibited by this act; unleſs it be by common conſent of parliament. And note that the words are in the diſjunctive, (ponatur ſeu levetur) ſo as if it be *ſet* by the king, altho' it be not levied *by him*, but by a *ſubject*, as it was in the caſes aboveſaid, it is within the purview of this ſtatute.." Pray Sir, does lord Coke ſet up the unſubſtantial diſtinctions, which you do? does he *not* expreſsly ſay, that all impoſitions and charges whatſoever are within the ſtatute; that all tallages, burthens or charges put upon the ſubject by the king, either to or for the king, *or to* or *for any ſubject*, by the king's letters patent, or other commandment or order, are prohibited by that act, unleſs it be by common conſent of parliament? and more, that if it be *ſet* by the king, although it be not *levied* by *him*, but by a *ſubject*' it is within the purview of the ſtatute—nay does he not conclude to the very point in theſe words, "within this ſtatute are all new offices erected with new *fees*, or *old offices with* NEW *fees*, for that is a tallage put upon the ſubject, which cannot be done without common aſſent by act of parliament——If my lord Coke's authority is admitted, and the fees rated and eſtabliſhed by the proclamation, are within his idea, *new* fees, there muſt be an end of the queſtion. Were they or were they not then within his idea, *new* fees? you have ſaid nothing on the ſubject, and therefore you are at liberty to admit or deny. They have, very improperly indeed, been contended by others to be *old* fees, notwithſtanding at the time of the proclamation their temporary eſtabliſhment had ceaſed by effluction of time, and they had *been* no legal exiſtence at all. *Old fees*, which are legal, as in oppoſition to *new fees*, which are illegal, are ſuch we apprehend as have had an immemorial uninterrupted continuance, are founded on *cuſtom* for their ſupport, or have *cuſtom* to evidence their *legal origin*——If the expired temporary regulation diſtinguiſhes them from *new fees*, which cannot be impoſed but by legiſlative authority, and claſſes them amnogſt *old fees*, which are legal on the ground of cuſtom, without being otherwiſe evidenced to be ſo by any legiſlative act, how long muſt ſuch temporary regulation have had continuance to work ſuch effect? we know the origin of theſe fees, and know their diſcontinuance and expiration; the doctrine is new, that on the expiration of a temporary charge or burthen on the ſubject, that the expired act, which gave it birth, and alone preſerved its exiſtence, ſhould tho' a dead letter be a ſufficient ſtock, on which to graft a continuance of that charge or burthen, not only *without*, but *againſt* the *declared will* of a component branch of the legiſlature.

Your obſervations upon the difference between fees and taxes, you truſt, will ſhew "in whom the conſtitutional right and power of regulating the fees of office doth reſide, and by whom it is to be exerciſed on fit and proper occaſions." The perſon, you refer to, is the lord proprietary or his governor, who repreſents him. And "fees, you have ſaid, *when certain*, (we preſume you mean when conſtitutionally rated and regulated) are ſuable for, and recoverable by, proceſs of indebitatus aſſumpſit." We may therefore fairly infer from the two poſitions, that the officers of our province are entitled to an action of indebitatus aſſumpſit, for the recovery of the fees thus conſtitutionally rated and regulated by proclamation. Upon an action brought for ſuch fees, what evidence would you offer in ſupport of the claim? would you offer the proclamation to the jury? indeed, Sir, you muſt do it, or at all events the officer muſt fail in his action; for an indebitatus aſſumpſit will not lie, as you yourſelf have ſaid, for fees, unleſs rated, regulated and reduced to a certainty; and in this province the fees are rated, regulated and reduced to a certainty by the proclamation *only*, which you contend to be a legal and conſtitutional rate and regulation. And yet, Sir, you cannot offer the proclamation in evidence; for in your own expreſſive terms, the people "neither are nor can be affected by it;" and to give it in evidence to maintain the action, of an officer or eſtabliſh his claim, would certainly affect them. To ſupport one of your poſitions, you ſee, the proclamation *may* and *muſt* be given in evidence; to ſupport another of your poſitions, the proclamation *muſt not*, *cannot* be given in evidence. Was ever man ſo bewildered! prerogative, Sir, will hardly be benefited by ſuch an advocate.

You have been very full in your explanation of the paragraph quoted by you from the charter; and we moſt ſincerely coincide with you in the aſſertion, that prerogative by its ordinances "cannot oblige, bind, "charge, or take away, the right or intereſt of any "perſon or perſons, of or in member, life, freehold, "goods or chattels." We further agree with you, that this reſtriction at the cloſe of the paragraph, "would have been implied by law, had it not been "inſerted:" inſerted, we preſume, to prevent miſconſtruction from an ignorance of the law and conſtitution. You ſeem to forget that you have maintained that the authority to rate and regulate the fees of office, is conſtitutionally in the proprietary or his governor, by proclamation. Are not the fees of office, which come out of the pockets of the people, a part of their goods and chattels? and if the authority to rate and regulate them is conſtitutionally in the proprietary or his governor, do you not in ſubverſion of the charter inveſt his lordſhip with a prerogative to "oblige, bind, charge and take away the right and "intereſt of the ſubject in his goods and chattels." But you ſay, the payment of the fees conſtitutionally rated and regulated by the proclamation, is optional only in the people. To contend, that a conſtitutional power exiſts to rate and regulate the fees of office by proclamation, and in the next breath to contend, that the exerciſe of ſuch conſtitutional power in the rating and regulating of the fees cannot bind or affect the people, is a flat contradiction, and an abſurdity in terms. Obedience is due to the exerciſe of every conſtitutional power, and "Obedience is an empty name, if every "individual has a right to decide how far he himſelf "ſhall obey." Whatever is legal prerogative, is the law of the land, and every law carries with it an obligation upon the ſubject. "In the exertion of theſe "prerogatives, ſaith judge Blackſtone, which the law "gives him, the the king is *irreſiſtible* and *abſolute*, ac"cording to theforms of the conſtitution." The prerogatives of the crown through the medium of our charter you communicate to the lord proprietary. If then his lordſhip or his governor by virtue of a legal prerogative, can conſtitutionally rate and regulate the fees of office, he is in the exertion of ſuch prerogative *irreſtible* and *abſolute*, and the people muſt be affected, bound and concluded by it. When therefore you affirm the proclamation in queſtion to be a conſtitutional exertion of legal prerogative, your aſſertion that the payment of fees rated and eſtabliſhed by it, is optional in the people, becomes repugnant and abſurd. Wherefore as the proclamation is maintained to be an exerciſe of legal prerogative, and every exertion of legal prerogative is compulſory upon the people; as it rates and regulates the fees of office, and the fees of office are the goods and chattels of the ſubject, it follows as an indubitable conſequence, that the proclamation in queſtion tends to "oblige, bind and charge the right "and intereſt of the ſubject in his goods and chattels," and is a palpable infraction of the charter, and a maſeſt invaſion of the property of the people.

We now come to your obſervations upon Mr. Locke; we feel no reluctance to ſubmit to the rule, he ſuggeſts, as deciſive betwixt us; let it then ſtand as the teſt or criterion of legal prerogative. We ſhall endeavour to ſhew, that you have miſtaken the ſenſe of your author, which underſtood, applies directly againſt you.

Whether the proclamation was, or was not, beneficial to the people, has been already conſidered; there is no neceſſity to repeat what has been before obſerved, Every objection to the old table of fees applies to the proclamation which attempts to ſet it up. The oppreſſions of that table, and the colourable practices under it, have been pointed out, and if advanced with truth, muſt be deciſive againſt the proclamation, upon the queſtion of tendency to the good or hurt of the people.

To come fairly at you upon your conſtruction of Mr. Locke, we wave the arguments evincing the evil tendency of the proclamation, and ſhall for argument ſake admit, that the tendency of the meaſure was to the publick good. The queſtion then between us is this Whether in Mr. Locke's idea the tendency of the proclamation to the good or hurt of the people is to be adopted as the criterion to decide the legality of it, *as an exerciſe of legal prerogative?*

Before, Sir, we remark upon Mr. Locke, permit us to point out a plain and obvious diſtinction, neceſſary to be kept in memory, between the tendency of a *particular meaſure* and the general tendency of the *power aſſumed*. *A particular meaſure* may tend to the publick good, the *power aſſumed* may tend to the publick hurt. To prove it by examples. *A regulation of our laſts* would greatly tend to the good of the people, but if a *power was aſſumed* to make the regulation by a proclamation, the general tendency of *ſuch a power* would be manifeſtly to the hurt and injury of the people; becauſe it would tear up the conſtitution by the roots, and deſtroy *repreſentatives*. *A regulation* too of the clergy, upon moderate and equitable principles would tend to the publick good; but ſurely the exerciſe of ſuch a power by the ſupreme magiſtrate only, by virtue of prerogative, would for the reaſon ſuggeſted, be productive of the moſt dangerous and alarming conſequences. Again,—It might tend to the publick good to ouſt the authors of particular offences from the benefit of clergy, which has often been done by acts of aſſembly, but ſurely ſuch power will never be intruſted to the ſupreme magiſtrate only, to be exerciſed by virtue of prerogative. A *particular meaſure* therefore, may be beneficial, the *power aſſumed* deſtructive.

Mr. Locke was a bold intrepid advocate for the