

The Party may be discharged, but I never (that I remember) met with, an Instance of any Prosecution either Criminal or Civil against any Officer in either of these Cases, tho' both have frequently happened: Besides as the Governments of the Plantations are dependant on the Crown, and that the Dernier Resort of the Inhabitants is to the King in Council, so in Case of any Application or Complaint to His Majesty, the Person or Persons complaining may lawfully apply for Copies of Records or Other Papers, which he or they may apprehend to be necessary to support such Complaint

In this Case under Consideration, the Persons who wrote the Letters act as under an Authority, which Authority, I conceive, has no Existence, and that therefore what they do, is to be considered as done by private Persons; and although they have demanded Copies, without paying or engaging to pay the Fees, which Demand I think no Officer is obliged to comply with (and which Copies they may certainly demand and ought to have on Payment of the Fees) yet I don't think the bare making such Demand, tho' by Pretence of an Authority, will subject them to a Criminal Prosecution of any kind; for I conceive that the doing of a thing which is prejudicial to the Publick or to some private Person by Pretence of Authority, which could not be done without Authority, is what makes the Crime; All which is humbly submitted

Dan. Dulany

The following are the Letters mentioned in the foregoing Case

At a Council held in the Council Chamber  
on Wednesday the first Day of August in the  
twenty fifth Year of his Lordships Dominion  
Annoq. Domini 1739

Present