

“ settle and regulate the Rewards his Officers in this Department may demand and receive,” and your Excellency having been pleased to pass a separate Instrument under the Great Seal, avowedly for the Purpose of ascertaining the Fees of the Land-Office, and in the Proclamation respecting Officers Fees in general, having published that the Fees of the Land-Office were under a separate Regulation; a Question of momentous Concern to the People of this Province may arise, whether the Land-Office is a publick or private Office? The professed Intention of the Crown, in the Grant of this Province to his Lordship’s noble Ancestor, was “ for extending the Christian Religion, and also the Territories of the *English* Empire:” And though his Lordship might dispose of his Lands upon such reasonable Terms as he might think proper, and direct formal Observances in making Titles to his Grants, so as to further the Increase and Settlement of the Province, yet we cannot but be of Opinion, that after the Publication of the Conditions of Plantations, that which before was incertain and to be governed by what was reasonable having Regard to the Motives and Ends of the Grant, was thereby ascertained, and a permanent Interest vested in the Subject, in the Conditions and Terms thus published, which cannot be rescinded by the Proprietary at his Pleasure. If the Land-Office was considered as a mere private Office, we do not see with what Propriety the Law in the Year 1716 could pass, to burthen the Publick for transcribing and repairing the Records in that Office, or to require that Bond with Security should be given for Preservation of the Records, and for the Supply of Materials to make up the Records of after Transactions, therein providing, that for every Breach, the Person particularly injured thereby might sue such Bond for recovering Damages; and that the Lower House of Assembly, or the Provincial Court, might cause the Bond to be put in Suit for the securing the Publick from all Charges and Expences that should be necessary for the putting and preserving the Records in Repair; and equally improper must have been the Supplementary Act passed in 1742. The Land-Office, Sir, is the publick Repository of the First and most necessary Evidence of every Man’s Title to his real Estate in this Province; the whole Records have been made up, so far as we can trace, at the Expence of the People. These Records have been considered as publick Records, kept under Securities appointed by Acts of Assembly; and Office Copies are constantly received and admitted as Evidence by the Courts of Justice. It very much concerns the Land-holders in this Province, to know by what Tenure they hold their Estates; if they have no Right to recur to the Land-Office Records and have Copies but at the Will of his Lordship, or on the Terms his Lordship may be pleased to allow them, they indeed are in all Cases, where Copies are necessary to evidence their Titles, only Tenants at the Will of the Proprietor, and those necessary Copies may be withheld till the Proprietor receives the Profit of another Sale.

The necessary Construction of the Proclamation with Regard to the other Officers, is in our Apprehension, an affirmative Allowance to receive the Quantums regulated by the late Inspection Law. When your Excellency authorized the Registers of the Land-Office to receive the respective Quantums enumerated in your Instruction to them, and which were allowed and limited by the late Regulation, without an exprefs Prohibition against receiving more; we fairly presume, that you meant an Allowance of so much, and an implied Prohibition to take more; for we cannot suppose you intended those Officers should be justified in receiving so much, and as much more as they could extort. And when your Excellency by your Proclamation prohibited the Officers from taking other or greater Fees than limited and allowed by the late Regulation, you as certainly must have meant a Prohibition against taking more, and an implied Allowance of so much; besides, so much by your Proclamation is not Extortion, and therefore on this Supposition may be demanded and taken. This Consequence results from the very Nature of Extortion, which is “ taking of Money by any Officer by Colour of his Office, “ either where none at all is due, or not so much is due, or where it is not yet due.” From this Definition of Extortion it is obvious, that what is due must be settled, before the Excessiveness of the Fee actually received can be adjudged Extortion; and most certainly when settled may be legally demanded and taken by the Officer; and the Proposition is equally plain, that what is due upon a Service done cannot be ascertained without the Consequence of ascertaining what would be Extortion in that particular Case; and, *vice versa*, what would be Extortion in any Instance, cannot be ascertained without previously ascertaining what is due. But your Excellency’s Proclamation expressly adopts the expired Regulation as the Criterion of Extortion, and therefore evinces, beyond a Possibility of Doubt, an implied Allowance to charge to the Extent of that Regulation.

On recurring to the late Inspection Law which limited the Officers Fees, we find that the Words of that Act are, “ That no Officer or Officers, hereafter mentioned in this present Act, their Ministers, Servants or Deputies, by Reason or Colour of his or their Office “ or Offices, shall have, receive, or take, of any Person or Persons, directly or indirectly, any “ other or greater Fees which shall become due, after the last Day of *November* in the Year “ 1763, than by this Act are hereafter limited and allowed to the several Officers hereafter “ mentioned:” Which Expressions every Body knows have always been construed, an implied affirmative Allowance of the Fees; and when your Excellency has been pleased to issue a Proclamation, in the very same Words, we cannot but conclude, that you must have had the same Idea affixed to them, as was universally affixed to those Words, in the Act from whence they were copied. But even should we be mistaken in our Conjectures, that you intended to restrain the Registers of the Land-Office, from charging more than allowed to them by your Excellency’s Regulation; or that you intended to give an implied affirmative Allowance to the other Officers to charge to the Extent of the late Regulation under the Inspection Law; your Excellency certainly thought, when you prohibited the charging any other or greater Fees, than
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