"lowing reasonable fees to their officers, as the chief "danger of oppression is from officers being left at li- "berty to set their *own rates* and make their *own de- "mands?*" In this instance certainly, if by no settlement aforesaid an imposition of *new fees*, and not an authentication of the *old and established fees* be understood, the master of the rolls was advised with, and assisted in settling his own rates. Is this proceeding consonant to the principles of justice? What says Hawkins? "There can be so much fear of abuses "when officers are restrained to *known* and *stated fees* "settled by the discretion of the courts, because the "chief danger of oppression"—&c. Should the judges be any ways interested in the settlement *(A)* of their officers fees, would not the reason assigned by Hawkins for the interposition of their authority, in the manner explained by Antilon, operate most forcibly against the exercise of it? Would it for instance be agreeable to equity and natural justice, to permit the secretary of this province to settle the fees of the county clerks, on the gross amount of whose lists he receives a clear tenth; carry the case a little further: suppose the practice had long prevailed of offering the secretary a genteel present on every grant of a commission for a county clerkship, Would it not be his interest to enhance the value of county clerkships? The gratuity would probably bear some proportion to the value of the place bargained for. Do the judges in Westminster-hall receive gratuities on granting offices in their appointment?—If they do, Hawkins's reason is felo de se—it is the strongest, that can be urged against the power, which it is meant to support.

If the judges have an interest in the offices in their disposal, a discretionary power to allow fees to their officers, is in some measure a power of settling their *own rates* and making their *own demands*. Coke's authority proves most clearly, that *new fees* annexed to *old* offices are taxes: whether the fees settled by proclamation are *new fees* remains to be considered; "fees, says Antilon, may be due without a precise "settlement of the rates, and the right to receive "them, may be co-eval with the first creation of the "offices, as in the case of our old and constitutional "offices; when such fees are *settled* they are not properly *new* fees, and therefore a regulation restraining the officer from taking beyond a stated sum for "each service, when he was before intitled to a fee "for such service, is not granting or annexing a *new* "*fee* to an old office."

The question therefore is now reduced to these two points—1st. Has not government attempted to settle the rates of officers fees by proclamation? 2dly. Are not fees so settled—new fees? If they are, upon Antilon's own principles, government hath no right to settle them. The restraint laid on officers, by the proclamation from taking *other*, or *greater* fees, than allowed by the late regulation, can be considered in no other light, than an implied affirmative allowance to take *such fees*, as were allowed by that regulation, and of course must be deemed an *intended* settlement of the rates *(B)*. The fees payable to our old, and constitutional officers, have been differently rated, by different acts of assembly; those various rates, were never meant to be extended beyond the duration of the temporary acts, by which they were ascertained, for, one principal reason of making those acts temporary, we have seen, was to reduce the rates occasionally, and to lessen the burthen of them. On the expiration therefore of the late inspection law, the regulation of officers fees expired with it, that is, there remained no obligation on the people to pay the rates settled by that, or any former regulation, and consequently the fees, as to the *quantum*, or precise sum, were then unsettled. Government entertained the same opinion, and issued a proclamation to ascertain the rates, or as is sometimes pretended, to prevent extortion, because the rates being *unsettled*, the officers might have demanded *any fees*; the fees therefore not being *settled*, when the inspection law fell, the settlement of them by proclamation was a *new* settlement, and of course the fees so settled were *new*; but *new* fees according to Coke cannot be annexed to *old offices* unless by act of parliament; his authority therefore, even as explained by Antilon, proves that a settlement by proclamation of fees due to *old* offices is illegal. A mere right in officers to receive fees, cannot be oppressive; the actual receipt only of excessive or unreasonable fees is oppressive, now, who are the propereſt judges whether fees be excessive or moderate? Officers certainly are not, the same objections, which may be made to their decision, apply to the governor, and most of them to the judges—juries may be partial, or packed. All these considerations plead strongly for a legislative regulation, which is liable to none of the objections hinted at. The doctrine laid down by Antilon in opposition to Coke's, teems with mischief and absurdities—"Old officers have a right co-eval with their "institution to receive fees," the inference therefore "*when their fees are not ascertained by the legislature, the* "*judges may ascertain them*" is by no means logical, it contradicts the most notorious and settled point of the constitution, it lodges a discretionary power in the judges appointed by the crown, and formerly removeable at pleasure, to impose excessive fees, and consequently to oppress the subject, without a possibility of redress, should the king, or lords refuse to concur with the commons in passing a law to moderate the rates, and to correct abuses—"*The governor adopted the late* "*rates as the most moderate of any*"—If he might have adopted *any other* rates, his *exceeding lenity* deserves our *warmest* thanks; but then we are more indebted to his indulgence, than to the limitation of prerogative; we cannot therefore be said to enjoy true liberty, "for "as that, (as Blackstone justly observes) consists not so much in the gracious behaviour, as in the limited "power of the sovereign." According to Antilon—"The late regulation of fees expiring with the temporary act, the governor's authority to settle the "rates revived," and he insinuates, "that it was "optional in him to adopt the rates of the late, or of "any prior regulation, or even to prescribe rates intirely new." If the old and constitutional officers have a right to receive fees, have they not, it may be asked, a remedy to come at that right, and if so, What remedy? The remedy, which the constitution has given to every subject under the protection of the laws. If a contest should arise between the officer and the person for whom the service is done about the quantum of the recompence, the former must have recourse to the only true, and constitutional remedy in that case provided, the trial by jury. Among other great objections to the proclamation, at least to Antilon's defence of it, are his endeavours to set aside that mode of trial, the best security against the encroachments of power, and consequently the firmest support of liberty. The person, who calls himself Antilon, has filed a bill in chancery for the recovery of fees principally due for services done at common law: by appealing to the court of chancery, of which the governor is sole judge, and in whom, he contends, the will to ordain the rates, and the power to enforce them are lodged, he has endeavoured to establish a tyranny in a land of freedom *(C)*. In answer to the declaration of chief justice Roll—I shall give the declaration of a subsequent chief justice, of greater, at least, of equal authority. The case I allude to is reported by Lord Raymond 1 vol. p. 703—It was asserted by council that the court of king's-bench, or judge of assize respectively, would exert their authority and commit persons refusing to pay fees due to the *old officers* of the courts, and that this was the constant practice. "But Holt, chief justice said, he knew of "no such practice; he could not commit a man for "not paying the said fees. If there is a right, there "is a remedy; an *indebitatus assumpsit* will lie, "if the fee is certain, if uncertain, *a quantum* "*meruit*"—and in both instances, a jury is to be judge. From hence it may be collected, that when the fees claimed by the *old* and *constitutional officers* were *unascertained* recourse was had to a jury, that their verdict might ascertain them. When fees are due to old officers, and not settled by the legislature, a jury only, upon the principles of our constitution, can settle them.

The uniform practice of the courts cannot establish a doctrine inconsistent with those principles. "If on "enquiry into the legality of a custom, or usage, "it appears to have been derived from an illegal "source, it ought to be abolished; if originally invalid, length of time will not give it efficacy"—It has been already noticed, that the authority exercised by the judges of settling fees, that is, of ascertaining the *antient* and *legal fees*, in pursuance of a commission issued by the king, on the address of the house of commons, is very different from the authority new set up, of settling fees by proclamation, issued contrary to the declared sentiments of the lower-house of assembly; if judges in this province may settle fees, because the judges in England have settled them, in the manner above-mentioned, where was the necessity of ascertaining fees by proclamation? Was it to influence, and guide the decision of our judges? If they have a right to exercise their own judgment in settling fees, in fact, in imposing them, Why was a standard held up by the supreme magistrate for their direction? In setting up that standard, is it not notorious, that he was advised, and principally guided by the very man, who is most benefited by that illegal settlement? Notwithstanding the misrepresented power of the English judges to regulate fees, and the different orders of the courts in Westminster hall, for restraining the exaction of illegal fees, the encroaching spirit of office had rendered all the precautions of the judges ineffectual; insomuch, that the commons in the year 1730 were obliged to take the matter under their own consideration. I mentioned in a former paper that transaction. In consequence of the enquiry—a report was made by the committee in 1732 to the house of commons, from which I gave some extracts in my first answer to Antilon. It appears from the report, "That orders had "been sometimes made for the officers to hang up "publickly lists of their fees, most of which lists are "since withdrawn, or have been suffered to decay and "become useless; that the officers themselves seemed "often doubtful what fees to claim, and *most of them* "relied upon no better evidence than some information from their predecessors, or the deputies of their "predecessors, that such fees had been demanded, "and received"—it is hereby evident, that the regulation of officers fees had been long neglected, that in consequence of such neglect, excessive abuses had crept into practice, and had grown from length of time into a kind of established rights; that a thorough discovery and reformation of those abuses required more time and attention, than the commons could spare from more important objects. As well might they have attempted to cleanse the Augean stables, a work, which the strength only of a Hercules could accomplish; disgusted with the tediousness and intricacy of the inquiry, they probably chose to refer the correction of abuses to the judges; men of integrity, and best acquainted with the practices of their own officers, and of course, best qualified to reform them. It is asserted by Antilon that the legislative provisions do not extend to any considerable proportion of the fees of officers and therefore, that by far the greatest part of officers, fees hath been settled by allowance of the courts, and not by statutes—this fact may be admitted, and the inference he would draw from it be denied; that judges have allowed fees to their officers in the first instance, without the intervention of a jury to ascertain them. If the judges have acted thus, they have certainly assumed a power contrary to the petition of right, contrary to this first and most essential principle of the constitution, "that the subject shall not be "compelled to contribute to any tax, tallage, aid, or "*other like charge*, not set by common consent in parliament"—All levies of money from the subject, by way of loan, or benevolence, are also cautiously guarded against by the petition of right. The very *putting* or *setting* a tax on the people, though not levied, has been declared illegal; even a *voluntary* imposition on merchandize *granted* by the merchants, without the approbation of parliament, gave umbrage to the commons, was censured and condemned. "This impo- "sition though it were not set on by assent of par- "liament, yet it was not set on by the *king's absolute* "power, but was granted to him by the *merchants* "*themselves*, who were to be charged with it. So the "*grievance* was the *violation* of the *right* of the people "in *setting it on* without *their assent*: i. parliament, not "the *damage*, that grew by it, for that did *only touch* "the *merchants*, who could *not justly complain thereof*, "because it was their *own act and grant*"——Petyt jus parliam. page 368, 369.——A tax may be defined a rate, settled by some publick charge, upon lands, persons, or goods. By the English constitution the power of settling *the rate* is vested in the parliament alone, and in this province in the general assembly.

Representation has long been held to be essential to that power, and is considered as its origin: upon this principle the house of commons, who represent the whole body of the people, claim the exclusive right of framing money bills, and will not suffer the lords to amend them. The regulation of officers fees in Maryland has been generally made by the assemblies. The authority of the governor to settle the fees of officers, has twice only, as we know of, interposed, but not then, without meeting with opposition from the delegates, and creating a general discontent among the people, a sure proof, that it has always been deemed dangerous, and unconstitutional. The fees of officers, whether imposed by act of assembly, or settled by proclamation, must be considered as a publick charge, rated upon the lands, persons, or goods of every inhabitant holding lands, or possessed of property within this province. That they have been looked upon as such by the officers themselves, is evident, from their lodging lists of their respective fees with the deputies from this province, to the congress at New-York, who might thereby be enabled to make known to his majesty, and to the parliament, the great expence of supporting our civil establishment. The author of the considerations once entertained the same idea, but such is the versatility of his temper, such his contempt of consistency, that he changes his opinions, and his principles, with as little ceremony as he would change his coat. Speaking of the sundry charges on tobacco —"The planter (says he) pays a tax, at least, equal "to what is paid by any farmer of Great-Britain pos- "sessed of the same degree of property, and moreover "the planter must contribute to the support of the "*expensive internal government of the colony*, in which he "resides." Now, the support of civil officers, unquestionably constitutes a part of that expence—he then refers to the appendix, where we meet with the following note.

"The attentive reader will observe, that the nett "proceeds of a hogshead of tobacco at an average are "4 £. and the taxes 3 £. together 7 £.—Quære—how "much per cent does the tax amount to which takes "from the two wretched tobacco colonies 3 £. out of "every 7 £.—and how deplorable must their circum- "stances appear when their vast debt to the mother "country and the *annual burthen of their civil establish-* "*ments* are added to the estimate."

Impressed with the same idea were the conferrees of the upper house in the year 1771. In their message of the 20th of November they assert—"Publick offices "were doubtless erected for the benefit of the commu- "nity, and for the same purpose are emoluments given "to support them." All taxes whatever are supposed to be imposed, and levied for the benefit of the community. If then fees are taxes, *or such like charges*, it may be asked, how came parliaments to place such confidence in the judges, as to suffer them to exercise a power, of which those assemblies have always been remarkably tenacious, and which is competent to them only? I might answer this question by asking another; how came many unconstitutional powers to be exercised by the crown, and suffered by parliament? for instance, the dispensing power—the answer is obvious; it required the wisdom of ages, and the accumulated efforts of patriotism, to bring the constitution to its present point of perfection; a thorough reformation could not be effected at once; upon the whole the fabrick is stately, and magnificent, yet a perfect symmetry, and correspondence of parts is wanting; in some places, the pile appears to be deficient in strength, in others the rude and unpolished taste of our Gothic ancestors is discoverable—

"——hodieque manent vestigia ruris."

It does not appear in what instances, upon what occasions, and in what manner, the judges have allowed fees to their officers—that is, have permitted them to take fees, not before settled by law, usage, or the verdict of a jury. The power if conclusive on the subject, and if exercised in the manner explained by Antilon, is unjustifiable, and may be placed among those contradictions, which formerly subsisted in the more imperfect state of our constitution, and of which, some few remain even unto this day. How it came to be overlooked by parliament, may perhaps be accounted for somewhat after this manner. The liberties, which the English enjoyed under their Saxon kings, were wrested from them by the Norman conqueror; this invader intirely changed the ancient constitution by introducing a new system of government, new laws, a new language and new manners. The contests, which some time after ensued between the Plantagenets, and the barons, were struggles between monarchy, and aristocracy, not between liberty, and prerogative; the

(A) If such settlement implies a discretionary power in the judges to fix the precise rates to be paid to their officers, when they are not fixed by ancient usage, the verdict of a jury, or by act of parliament.

(B) I say intended, because the settlement by proclamation being illegal, is in fact no settlement.

(C) See the governor's answer to the address of the house of delegates in 1771.