

Lib. C. B. Whether the writing such Letters is such an Assuming an illegal Authority, or such an Acting as to render the Persons lyable to any and what criminal Prosecution at Law.

May it please Your Excellency.

In Obedience to Your Excellencys and the Hoñble Councils Commands signified to me by M^r Ross: I have considered the within Case

As to the first Question; I conceive that no Members of the Lower House of Assembly can legally assume any Authority, or act as a Committee of that House after a Prorogation, and during the Interval of the Assembly, by Virtue of any Order of the said House; because all the Orders thereof determine by a Prorogation

The second Question can't be resolved by any Book Case that I can recollect, but I think there are some to which it may be compared, Viz. Where an Officer by Virtue of an Order of Either House of Parliament, takes a Person into Custody after a Prorogation (as was the Case of Pritchard in Raymond 120) or keeps a Man in Custody after the Prorogation, who
 p. 34 was committed during the sitting of the Parliament. 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 dependent 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 barely 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^l Dulany