

L. H. J.
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formed Opinions. Doubts, at least have been entertained in England, whether the positive Ordinances of the Penal System be suitable to the Circumstances of the Nation; whether, in many Instances not too undistinguishing, and sanguinary; but the Judges have no Authority to reject the Rule enjoined by the Legislature: Such Authority would elevate the judicial Power above it's proper Rank; an Authority the Legislative will hardly ever be so incautious as to confer by Provisions, that such Penal Statutes, and such only shall be carried into Execution, as the Discretion of Judges may adopt; but this seems to be the Result of the Position, or Doctrine, that such Penal Statutes, and such only as suit our Circumstances extend hither. The following among other Instances may sufficiently evince that the Rule of Adoption has not been uniform in respect of the Penal Statutes enacted before the Settlement of this Province.

Notwithstanding the Statutes of Edward sixth, the Act of 1744 was thought to be expedient, one of these Statutes comprehends other Offences, concerning which our local Acts are silent, tho' more alarming, and atrocious, than the stealing or burning a Shallop or Boat of seventeen ffeet Keel

Notwithstanding the Statutes of Elizabeth, the Acts of 1692 & 1715 were enacted, the Statute of James the First has been introduced, by the Act of 1706, it might be very improper to be more explicit, if it be a just Observation "that Crimes are more effectually prevented by the Certainty than by the Severity of Punishment," the Uncertainty in Respect of the Extent and fforce of the Penal Statutes must be extremely inconvenient.

The Feelings of Humanity cannot but be affected, tho' the positive Law be clear, where the Example of extreme Punishment becomes necessary; but when Crimes, however malignant, have been committed against social Rights, and the very Existence of positive Law for their Punishment is doubtful, my Situation must be too obvious to require Explication. Persons convicted on some English Statutes having been discharged with Impunity, because the Extent of those Laws was doubted, I am persuaded that the Principle of the apparent Lenity not being as generally understood, as the Impunity has been observed, the Circumstance has produced a Degree of flattering Reliance that equal Tenderness would be shewn to Offenders convicted on Laws indubitably existent, and operative, and thus the Uncertainty I have taken Notice of, by lessening the Dread of Punishment has proved an insnaring Encouragement to the Commission of Crimes. Having thus briefly suggested on what Motives I recommended to your Attention the State of our Criminal Law, you will be pleased maturely to consider, whether it would not be more safe, prudent, and expedient, after a due Examination of their Propriety and Fitness, to ascertain by Act of Assembly what