

Evans and the Assembly, the former issued an ordinance to establish courts; in which the judges were directed to hear and determine cases "as near as conveniently may be to the laws of England, and according to the laws and usages" of the Province. In equity cases, they were to "observe" as near as may be the practice and proceedings of the High Court of Chancery in England. Against this establishment of courts by ordinance the Assembly remonstrated, but to little purpose, and the quarrel dragged on through subsequent administrations.²⁹ The constitutional points in dispute lie without the scope of our consideration, but the reference to the laws of England concerns us directly.

Furthermore, in 1718, Governor Keith and the Council fell out over the commissions of the judges. Should they run in the name of the Governor merely—as had been the case—or should they not rather run in the name of the King, with the Governor's attestation? In supporting the latter view, the Governor argued that the judges were the King's judges; and that the Proprietor had only the right of naming them, and he urged the example of Durham, where by Act of 27 Henry VIII. ch. 24, the power of appointment was taken from the Bishop and vested in the Crown.

"In reply," says Shepherd, "the Council stated that the difficulty had arisen in not distinguishing the difference between England and 'new colonies made without the verge of the ancient laws of that Kingdom.' As the King could give power to subjects to transport themselves to the dominion of other princes, where they would not be subject to the laws of England, so he might allow them to go to any foreign country upon any conditions he might choose to prescribe. Furthermore, since the native Indians, who inhabited these newly discovered American lands, were not subject to the laws of England, 'those laws must, by some regular method, be extended to them, for they cannot be supposed of their own nature to accompany the people into these tracts in America' any more than into any other foreign place. The King, by his charter, had given the proprietor and the people full power to enact laws not repugnant to those of England, but 'without extending any other than such as were judged absolutely necessary for the people's peace and common safety till such time as they should think fit to alter them.'"

²⁹ Shepherd: *Proprietary Government in Pennsylvania*, pp. 386 ff.