

wards the perpetuating the great Security of your own, as well as the Rights of every other Subject.

Sign'd per Order, M. J. Cl. Lo. Ho.

Which was sent to the Upper House by Mr. T. and three other. They return, and say, they Delivered it.

Col. H. and Col. T. for the Upper House, deliver Mr. Speaker the following Message, viz.

By the Upper House of Assembly, October the 22d 1724.

Gentlemen,

IN the Close of your Message of the 10th Instant, by Col. M. and five others, you recommended to us such Draughts of an Oath for the Judge of the Provincial Court as should be laid before us by Mr. Attorney General, as more agreeable to our Constitution; than the Oath now in use, by reason of some Defects found in them, which, as you conceived, proceeded from the frequent and careless Transcribing of them by young and careless Clerks.

*Upper House's Answer
to 2d Message about
the Judges Oaths.*

We were willing to joyn with your House in restoring the ancient Usages of this Province, by removing all such defects as should appear to have crept into the form of the Oath to the prejudice of our Constitution, and therefore proposed in our Message of the 16th Instant, the Amendment of all such Defects, and intended to have governed our selves by such ancient Forms, when sent down to us, as well as by the draught of the Oath laid before us by Mr. Attorney General.

But for as much as we conceive by your Message of Yesterday, that no such defects as you refer'd to in that Message, are design'd to be laid before us, we fell upon the Consideration of that Draught of the Oath brought in by Mr. Attorney General, and find essential Deviations from the Ancient Forms of the Oath's (as appeared to us by the usual Forms exhibited by the Clerks of the Office) whereby the Judges of our Courts, if such Oath shou'd be imposed upon them, would be intirely Arbitrary in their Determination of what Laws and Statutes of *England* are most agreeable to our Constitution, and what not, whether they import Conveniency or Ruin to the good People of this Province.

However, to manifest our ready Condescension in whatever may be found useful towards the perpetuating the Security as well as the Rights of his Majesty's Subjects within this Province, we are willing to concur with you in the Alterations propounded, so far as they relate to the Letters of the Lord Proprietary, or any other Person, in Obstruction to Justice, which we acknowledge ought to be indifferently Administred without regard to such Letters. For we are intirely of Opinion with you, that the Liberty and property of the People can never be preserved, unless the Laws are made the Rule of Judicature; but then we think it absolutely necessary, that all such Laws should be in some Manner or other Apprehended and made known to the Judges, lest different Judgments in things of like Nature, should be given at different Times, through the variety of Opinion in what Statutes do, and what do not extend to this Pprovince; and the Judges themselves be reduced to the last extremity of Declaring upon Oath in matters which appear altogether doubtful and uncertain to them.

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