

May it please your Honours,

*3d Message about Judges Oaths w. th remarks on the Upper House's answer 20th 21. N. B. This Message delay'd some time on private Conferences betwixt some Members of both Houses.*

YOur Message of the 23d Instant seems to object against the form of the Oath of Judge, because it essentially deviates, as you are pleas'd to observe, from the ancient Forms of the Oath's used; but as such Deviations might have been occasioned by the Mistakes of Copying Clerks, we should have hoped that observation would not have deserved your Notice, if there were no Deviations in them from the Essentials of the Constitution; And, we hope, your Honours will not find any Deviation of that kind; whatever seems in your Message to import it, we

presume arises from your Honours misexpressing your Sentiments of the Constitution, or your misapprehension of the Oath, and not from any Impropriety in it.

Your Honours are pleas'd to observe, That by the Oath propos'd, the Judges would be intirely arbitrary in their Determination of what Laws and Statutes of *England* are most agreeable to our Constitution; we cannot conceive the Judges would be under less Restraint by that Oath which mentions the Laws of *England*, than they were by the former Oath which was more general, for that requires them in all Articles of their Commission to do equal Right to the Poor as well as to the Rich, to the best of their Cunning, Skill and Knowledge, and according to the Presidents and Customs of the Province; and it is one of the Articles of their Commission, to Determine according to the Laws of *England*, &c. And the Presidents and Customs of this Province have been always to Try and Determine according to those Laws; and therefore we think your Honours cannot well conclude the Judges, by this Oath, cou'd or wou'd be arbitrary, unless they always have been so, which we are well assured the Honourable Judges in your House, as well as those in ours, never took themselves to be, in the point debated; nor, we believe, any other of the Judges that have the Honour to Execute his Lordship's Commission.

*Explanation of the sense of the Oath that is objected to.*

Besides, we beg leave to observe the Form of the Oath laid before you, by Mr. Attorney, is to oblige the Judges to execute their Commission according to the Laws, Statutes and reasonable Customs of *England*, and Acts of Assembly, and usage of the Province of *Maryland*. So that we doubt not but the Honourable Judges would readily construe those Words, to oblige them to Judge no otherwise according to the Laws of *England*, than is consistent with the Acts of Assembly and usage of this Province; for that all those Words are to be taken together, and relate to one Rule of Duty, and not to several Rules of Duty. And we hope your Honour's will not suppose the Import of the Words in the Oath propos'd, to be more uncertain now, or of other Consequence than the Import of the like Words in the Commission, which the Judges were sworn to Execute, was formerly, unless we are so unhappy as to render the Oath less intelligible, by endeavouring to explain it and make it more particular; and we cannot conceive what Danger of Ruin to the People your Honour's can be apprehensive of, from Judging by any of the Laws of *England*, according to the usage of this Province, or, which is the same thing, in the manner we have been ever judg'd by, according to those Laws. We have never yet heard of any Inconveniency arising from doubts of what Statutes extended here, or that not; nor did we ever hear of different Judgments given in this Province