

Gentlemen,

UPON Consideration of your Message of October. the 24th, 1724, in Answer to the Indorsement made upon the Bill, ^{Upper House on} ^{Circuit Bill.} entituled, *A Supplementary Act to the Act for tryal of Matters of Fact in the Counties, &c.* We are willing to Condescend so far in the first point controverted, that Bills of Exception may be Signed and Allowed of by the Judges of *Oyer and Terminer* and *Goal Delivery*, in favour of Life only, least the too frequent Use of such Bills of Exception in other Criminal Cases (which is contrary to the Practice in *England*) should prove an Encouragement to ill People who by that means might frequently Escape the condign Punishment that might be justly due to their Offences.

Secondly, we see no reason to recede from our former opinion, as to the Voices of the County Justices in Criminal Cases, upon the Circuits; for we conceive, that the allowance thereof would be an Innovation made (as we observed to you before) upon the *English Constitution*, which we are as desirous of Copying after, as any the Members of your House, in all the Branches thereof, which are adequate to the Circumstances of this Province. For in that which was noted upon the back of the Bill, we had no regard to what was practised upon special Commissions and Writs of Association, whereby some other Person's, at the King's Pleasure, were joyn'd with the Judges in Judicature, but we therein had respect to the *Usages of England*, as it was practised in the Administration of Justice on the Circuits, which is the thing now under the Consideration of both Houses; so that you must give us leave to say, that your House was mistaken, if you apprehended that we in what strictly related to the Administration of Justice upon the Circuits lately established, and now about to be regulated in the Practice thereof within this Province.

Thirdly, We are still of opinion, that a general Restraint upon the Judges of *Oyer and Terminer* from trying any of the matters Criminal, which are Cognizable in the County Courts, may be of evil Consequence; for as we could never have imagined that the Judges upon the Circuits, altho' they had lain under no Restraint, would ever have suffered themselves, by the hearing of petty Offences, to have been interrupted in the trying of matters of Consequence, and such Causes as were necessarily determinable before them, so we believed, that their own discretion would have been a Rule to them in all such Cases. However we are willing to joyn with you in restraining their Jurisdiction to such Cases only, as shall seem necessary or doubtful, and where the Offenders are Notorious. But we must likewise represent to you, that we see no reason for encouraging Roguery of any sort, by lessening the usual Fees upon the Prosecution, which is always look'd upon to be a part of the Punishment justly due to Offenders. The Judges, we are confident, will always avoid the hearing of any other Criminal Cases than such as shall be thought necessary; wherefore, we are of opinion, that to lessen the Fees given by Act of Assembly, in such Cases, would be an Indulgence of the Legislature, which ill People have no manner of Title to.

Fourthly, We concur with your House, that Tryals at Bar, where the Nature of the Case and the furtherance of Justice evidently require it, may be allowed of, with a saving to all Parties accused, the benefit of Writs of Removal, and Tryals in the Provincial Court, or before the Justices of *Oyer and Terminer* and *Goal Delivery*, as the Nature of the Case may require, with which Alterations and Amendments this Bill will pass.

Sign'd per Order, S. S. Cl. Up. Ho.

By