

Mr. W. Richardson, Mr. S. Wright, Mr. Sim, and Mr. Worthington, appeared in the House. The Order of the Day being read, the House resumed the Consideration of the Matter relative to Mr. John Frederick Augustus Priggs, and after some Debate thereon, referred the further Consideration thereof till To-morrow Morning.

His Excellency communicates to Mr. Speaker the following Message.

GENTLEMEN,

A REVISION of the Criminal Law had been recommended in *May* Session 1768 to the Assembly, then convened, by my worthy Predecessor, and at the Opening of a late Session, I also requested your Consideration of the same Subject.

From the Answers given to Col. Sharpe, and to myself, on those Occasions, as well as from other peculiar Circumstances, I inferred that a general Recommendation would be sufficient; but an Explanation of the Grounds, on which I have pressed you to consider the State of the Penal Law, being now desired, I must observe, that there is not, I apprehend, any precise invariable Rule established, by which the Extent of the Penal Statutes of *England* may be ascertained; and, therefore, in what Cases Punishment may be regularly inflicted in this Province, according to their Prescripts, is a Question, on which various Sentiments may be expected, and in Fact, have often occurred. Should the Position be admitted, that such of the Penal Statutes extend hither, as are suitable to the Circumstances of the Country, still what are, or are not thus suitable, may be, in many Instances, on a Consideration of Statutes denouncing even capital Punishment, in, at least, One Hundred and Sixty Cases, a very doubtful Question; and which being determinable by the Courts, seems moreover to admit too great Authority in the Judges, and to give too much Scope for Contrariety in the Decisions, which a rigorous or compassionate Disposition may influence; for Men's Qualities, when not controuled by fixed and established Provisions, will generally slide into their most deliberate and best 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 its 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 the 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* VIth, the Act of 1744 was thought to be expedient, one of these Statutes comprehends other Offences, concerning which our local Acts are silent, though more alarming and atrocious than the stealing or burning a Shallop or Boat of Seven-teen Feet Keel.

Notwithstanding the Statutes of *Elizabeth*, the Acts of 1692 and 1715 were enacted, the Statute of *James* the I. 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 Force of the Penal Statutes must be extremely inconvenient.

The Feelings of Humanity cannot but be affected, though 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, this Circumstance has produced a Degree of Flattering Reliance, that equal Tenderness would be shewn to Offenders convicted on Laws undubitably 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 Penal Statutes shall have the full Force of Laws here, than to leave this important Determination to the varying Construction, Discretion, or Opinions of others.

October 25, 1771.

ROB. EDEN.

Which was read.

William Hayward, Esq; from the Upper House, delivers to Mr. Speaker, a Bill, entitled, *An Act for preventing trivial Suits in the Provincial Court*; endorsed: "By the Upper House of Assembly, October 25th, 1771: Read the First and Second Time, by an especial Order, and will pass."

Signed by Order,

U. SCOTT, Cl. Up. Ho.

Which was read here the First Time and ordered to lie on the Table.

Daniel of St. Thomas Jenifer, Esq; from the Upper House, delivers to Mr. Speaker, the Bill, entitled, *An Act for imposing a further additional Duty of Five Pounds current Money per Poll on all Negroes imported into this Province*; thus endorsed: "By the Upper House of Assembly, October 24th, 1771: Read the First Time and ordered to lie on the Table."

Signed by Order,

U. SCOTT, Cl. Up. Ho.

"By