

made for them,² until a representative Assembly "broke out" in 1619; and later, under the royal government, the laws of Virginia were under the direct control of the crown. In Maryland, the second Assembly, that of 1637, refused to accept a body of laws sent over by the Proprietor and insisted on their own right of initiation, even if the results were very similar to those intended by the Proprietor.³

At the first Assembly an act had been passed to establish for felonies the same penalties as in England, but this was now considered as no longer in force, and on the uncertainty, the Assembly proceeded against Claiborne and Smith by bills of attainder. For lesser matters Governor Calvert's commission authorized him to proceed according to the laws of England.^{3a} During the first ten years of the colony's existence, in fact, whenever there was a lack of specific colonial precedent or law, and in cases which did not involve the loss of life, member or freehold, there was a tendency to refer to the law of England so far as applicable.⁴ Then ensued a period when more discretion was given to the courts, and only specific statutes or customs of England were introduced by the legislature.⁵ But after the Restoration matters took a more definite shape. In 1662 an act was passed, which, waiving the former distinctions as to crimes, provided that in all cases when the laws of the Province were silent, justice should be administered "according to the laws and statutes of England, if pleaded and produced." To meet objections expressed by the Upper House as to the inconvenience of the extension of all English laws to Maryland, the decision as to the right pleading and the consistency with the provincial welfare

² Brown, A. *The First Republic in America*, passim. See index, s. v. Laws.

³ Maryland Archives. I. Assembly Proceedings, pp. 9-24.

^{3a} *Ibid.*, pp. 16-24. Bacon, *Laws of Maryland*, p. 6 and note.

⁴ Maryland Archives. I. Ass. Pro. pp. 147, 183-4. McMahon p. 113. Mereness pp. 258-9. Reinsch p. 41. Bacon, *Laws of Md.—Acts of 1642*, summer, ch. 4; 1642; fall, ch. 2, 3.

⁵ Maryland Archives. I. Ass. Pro. p. 210. Bacon's *Laws of Md.—Act of 1646*, ch. 2.