

of the English laws involved was left with the courts.<sup>6</sup> This act Reinsch describes as "the first definite recognition in America of the power of the courts to apply the common law of England to colonial conditions and to rigid provisions deemed unsuitable."<sup>7</sup>

Then followed a period of uncertainty. If in 1681 the members of the Lower House appeared willing to recede from their demand for the English laws,<sup>8</sup> on other occasions they emphasized their right to them. In 1674, for example, a bill to fix definitely what original statutes should be in force in Maryland was lost by the opinion of the Lower House that the introduction of English statutes should be general.<sup>9</sup> Ten years later, when the troublous times of the Revolution were drawing nigh, upon another attempt of the Lower House to secure legal recognition of their desired end, the Proprietor commented at length on the danger of this idea and answered that he was willing to

"admit this alteration, that when the laws of this province are silent, justice may be administered according to the laws of England, if the Governor or Chief Judge and the justices of my court shall find such laws consistent with the condition of my Province. To a bill with this alteration will I set my hand, but not otherwise."<sup>10</sup>

Later still, and not long before the Revolution, the Lower House resolved—a procedure hitherto rare, but, as Mereness well points out, one that later became formidable—that they demanded "the benefit of the laws of England and of this Province as our inherent and just right."<sup>11</sup>

Thus early appeared an indefiniteness which, on the side of colonial law, at least, justifies the remark of Governor Hutchinson. For although the Assembly succeeded in maintaining

<sup>6</sup> Maryland Archives. I. Ass. Pro. pp. 435-6, 448, 504. Mereness p. 261. McMahon p. 113. Bacon, Laws of Md.—Act of 1662, ch. 3.

<sup>7</sup> Reinsch, p. 42.

<sup>8</sup> In order to increase the power of the County courts at the expense of the Provincial Court.

<sup>9</sup> Mereness, pp. 261-262.

<sup>10</sup> *Ibid.*, p. 264.

<sup>11</sup> *Ibid.*, p. 264; and see Bacon, Laws of Md., Acts of 1663, ch. 4, and note; 1676, ch. 1, 2 and notes; 1678, ch. 15, 16 and notes; 1681, ch. 3; 1682, ch. 12.