

its right of initiative, and passed acts for the Province, such legislation never amounted to a complete and inclusive code.¹² These provincial acts were often negated by the Proprietor, and in time the Assembly—and especially the Lower House—claimed for Maryland the extension to the Province of not only the common law of England, but also the statute law of the mother country, in cases where no specific law of the Province applied. The former claim was before long admitted by the Proprietor;¹³ and the common law, so far as applicable and unmodified, became a recognized part of the law of Maryland. The demand as to the statutes, however, was denied.

While the statutory doctrine was thus uncertain, the commissions issued to the judges were understood—at least, in after years—to refer to the Laws of England, or the Laws and Statutes of England, as supplying the deficiencies of the Province laws.¹⁴ The difficulty was that these judges were proprietary officers, over whom the Assembly had little control, and that they might use their discretion arbitrarily. That this was not an imaginary danger is shown by the action of the Governor in 1677, when he declared that an Act of Parliament against nuncupative wills was in full force in Maryland,¹⁵ while in Fendall's trial the English law of treason was applied.¹⁶ Such measures as these were regarded by the Assembly as legislation without their consent; and in the expanded statement of grievances issued by the Protestant party in the Revolution we find these charges against the Proprietor emphasized:

Making laws without the consent of the Assembly and extending them to the estates of the inhabitants.

¹² Maryland Archives. I. Ass. Pro. passim. Steiner, *Maryland's First Courts*. American Historical Association Report, 1901, Vol. I. p. 222.

¹³ McMahon. *Historical View*, pp. 113-116.

Reinsch, P. S. *English Common Law in the Early American Colonies*. Bulletin of the University of Wisconsin, No. 31 [1899].

¹⁴ McMahon, p. 113. See also the documents referred to below.

¹⁵ Sparks. *Causes of the Maryland Revolution of 1688* [in Johns Hopkins University Studies, Series XIV.], p. 75, citing Lib. R. R., 158.

¹⁶ *Ibid.* p. 86, citing III. Ass. Pro.. pp. 313, 330, 332.