

"The controversy thus terminated in partial submission to the will of the proprietary, but the Lower House had accomplished all their purposes. They had not only brought about a recognition of their right to such of the statutes as had been adopted in the practice of the province; but they had also couched this recognition in such general terms, as to permit the future introduction of English Statutes. The words "*as used and practised*" in this act, might relate either to what had been the usage and practice of the province in adopting English statutes, as a practice sanctioned and to be continued, or to the previous use and practice of these statutes as a test of their applicability; and even if the latter construction were adopted, the practice which was to give them efficacy, was not by the express terms of the act a practice anterior to its passage, but only to the time of the application of the statute as a rule of judicature. This subterfuge accomplished all its purposes; for from that period to the revolution, the courts continued to exercise the power of adopting and giving effect to such statutes as were accommodated to the condition of the province without regard to the enquiry whether they had been practiced upon or enacted previously to the Act of 1732."<sup>24</sup>

Here, however, McMahon does not sufficiently emphasize the fact that difficulty might arise from the old uncertainty as to what statutes had been used and practised. This difficulty, of course, was not so great as in the earlier days, because the legislation of the Assembly had attained so much more towards completeness. It was felt, however, as Mereness points out,<sup>25</sup> in the criminal law, who cites a communication made to the Lower House in 1771 by Governor Eden. From this we learn that some persons convicted on some English statutes had been discharged with impunity, because the extension of these was doubted, with encouragement to crime as a result.

With the Revolution the authority of the British Government came to an end. But, when a new constitution was to be formed, the old question presented itself in a retrospective manner. The fondness for English precedents still remained, and the Bill of Rights, sec. 3, declared that the inhabitants of Maryland were "entitled to the benefit of such English statutes as existed at the time of the first immigration and which

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<sup>24</sup> McMahon, pp. 127-128.

<sup>25</sup> Mereness, Maryland, p. 277. Steiner: Life and Administration of Sir Robert Eden, Johns Hopkins University Studies in Historical and Political Science, Series XVI., p. 48 [382].