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THE TWENTY-EIGHT CHARGES AGAINST THE KING
IN THE DECLARATION OF INDEPENDENCE.

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The Declaration of Independence consists roughly of two parts. The first part may be described as composed of the two or three opening paragraphs which set forth with much eloquence the right of revolution and the doctrine of political equality and other rights of men, as they were called, which have become the foundation principles of our American life. The second and much longer part is the rest of the document devoted to the twenty-eight charges against the King.

In a book published some years ago called "The True History of the American Revolution" I showed how the doctrines of political equality, self-government for naturally separated communities, and other rights of man described in the Declaration had originated in the Protestant Reformation and had been studied by the people of our revolutionary period in the works of Burlamaqui, Beccaria, Locke, Grotius, and Puffendorf. These doctrines are extremely interesting and when the Declaration is nowadays read at Fourth of July celebrations the audience listen with much
attention to the opening paragraphs. But when the Twenty-eight Charges against the King are reached the audience listens only out of politeness or patriotic duty. The charges seem very dull and tiresome and mean nothing much to a modern mind except that one carries away a general impression that the King must have been a horrible monster of tyranny and cruelty against an innocent child-like and loving people.

But when we know in some detail the facts and circumstances which underlie the Twenty-eight Charges they are fully as interesting as the general reasoning about the rights of man and they contain a condensed history of the revolutionary movement up to the year 1776. The rebellious colonists had begun their protests some ten years before by denying the right of Parliament to inflict upon them what they called internal taxes of which the stamp tax was the notable instance; but they admitted that in all other respects Parliament had full jurisdiction over them. Parliament thereupon took them at their word, repealed the stamp tax and passed the paint, paper and glass act, which levied what were supposed to be only external taxes because they were duties on the importation of paint, paper and glass collected at the seaports instead of generally throughout the country, like the stamp tax. Parliament also about the same time suspended the power of the legislature of New York because it refused to furnish the British troops stationed in that province with salt, vinegar and beer.

These practical instances of the power of Parliament convinced the patriot party among the colonists, that they had made a great mistake in admitting that Parliament had jurisdiction over them in every respect except the one item of internal taxes. They soon saw that there was no real distinction between internal and external taxes. A duty collected at a seaport on articles of universal use like paint, paper and glass was in the end paid by the whole body of the people in the enhanced price of those articles and was just as much an internal tax as the stamp act. And, more-
over, what could be a greater or more imperial exercise of power than the suspension by Parliament of the functions of one of the legislatures. They, accordingly, changed their ground and in 1774 the extremists among them had taken the position that Parliament had no authority whatever in the colonies, either in matters of taxation or anything else; that they owed no allegiance whatever to Parliament and were not under its government. The moderates, were willing to allow Parliament to regulate their external commerce as part of the general commerce of the British empire provided the regulation did not take the form of taxation. Both parties however admitted that they owed allegiance to the king who had originally created the colonies and given them their charters in the days when Parliament was a very insignificant part of the English government.

The numerous acts of Parliament relating to the colonies which had been passed in the last hundred years were, they said, all without legal or constitutional authority and therefore void, although some of them, like the post office act, were undoubtedly beneficial and all of them had been accepted in America because the colonists were weak and careless of their rights, and Parliament being occupied with the task of driving the French from Canada, had not passed many acts relating to the colonies or attempted to regulate them very closely. But now that the French war was over and Parliament, the ministry and the King had announced their intention of reorganizing the colonies, bringing them into close relation and better obedience and had even begun passing acts to that effect, the colonists, or at least a very large party among them, declared that they would stand out against this increasing power of Parliament which had already assumed more jurisdiction than properly belonged to it and apparently intended to assume everything.

In a word, the American colonists were looking upon the beginning of the modern British empire, in which Parliament is supreme, and they had decided to break away
from it. Up to the time of the Declaration of Independence in 1776, the whole debate had been about Parliament and its powers. All the protests and indignation had been directed against Parliament; while the king had figured merely as the person or officer under whom the colonists were content to live instead of under Parliament. They were willing to acknowledge him as head of an empire in which they were semi-independent states under his protection against foreign invasion. They would render him a certain amount of allegiance and allow him any rights of vetoing their laws or other privileges which he had before the close of the French war. Their congress had sent to him two petitions to this effect worded in what was then known as "affectionate and dutiful language".

It is therefore a little surprising to find in the Declaration nothing about Parliament. The word Parliament does not occur. Everything is about the king and instead of being the gracious sovereign under whom the colonists were willing and anxious to live, he suddenly becomes a monster of tyranny and is charged with twenty-eight serious political crimes and misdemeanors.

The slightest reflection, however, shows that there was good reason for this change. The revolutionary movement had progressed. The patriot party having ejected from every colony its British governor and the British army having evacuated Boston and gone to Halifax, the country was de facto independent. British authority was for the time at least, extinguished; and the patriots in their congress had decided to declare formal independence and announce it to the world. But from what should they declare independence? Not from Parliament, for they had said that they owed no allegiance whatever to that body and it had no authority over them. The only part of the British nation to which they had admitted allegiance was the King. Of him therefore, they declare their independence and give twenty-eight reasons for doing so.

One of these reasons, the 13th, was that "He has com-
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bined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws giving his assent to their pretended acts of legislation." This is the only reference to Parliament and the word itself is not used. Nine other reasons follow each one of them instancing one of the "pretended acts of legislation". These nine reasons may in one sense be considered the most important because they refer to matters which had been the principal subjects of controversy during the last ten years, namely the authority of Parliament in the colonies, and under this head might be written the whole previous history of the revolutionary movement. It is not well, perhaps, in the beginning of this essay to lay much stress on any one set of the reasons or charges; but the ten just mentioned would seem from our modern standpoint, as we look backward, to have furnished a very strong, if not the strongest ground for breaking away from the British empire, namely, that the King our last hold and only connection in the empire, had deserted us and broken his contract with us by joining with Parliament in an effort to fasten forever the jurisdiction of that body on America.

Of the remaining reasons the five from the 23rd to the 27th, are based on the ground that the King by declaring war upon us, sending out troops and war ships to stop what he called the rebellion, fighting the battles of Lexington and Bunker Hill, occupying Boston, burning with his fleets the town of Portland in Maine and the town of Norfolk in Virginia, had by those acts abdicated his government over us, declared us out of his protection and friendliness, broken, in short, his side of the allegiance or contract with us and therefore, we were at liberty to declare the contract and allegiance void and extinguished. The English, of course, said that it was very absurd to give the acts of a mother country in suppressing a rebellion as legal reasons to justify the rebellion. But it is probable, nevertheless, that these reasons carried great weight among our people and showed to them the uselessness of trying to remain in the
empire by relying upon the King alone who, as it now seemed, would obey the majority of Parliament and make war upon us at Parliament's demand.

Of the remaining charges the 1st to the 12th are concerned principally, with complaints about colonial laws, which the King had vetoed and complaints of his efforts to check the rising tide of opposition to the authority of Parliament or rebellion, as he called it. The last and 28th charge is to the effect that the patriot colonists had petitioned the King several times in the most humble terms to abstain from his objectionable course of conduct, but he would not listen and was therefore a tyrant and unfit to be the ruler of a free people.

Immediately after the Declaration was published in England, John Lind, a London barrister, wrote for the British ministry a detailed analysis of the charges and this analysis called "the Answer to the Declaration of the Congress" was published and passed through many editions. Thomas Hutchinson, who had been governor of Massachusetts, and was now living in England, also wrote a pamphlet called "Strictures upon the Declaration of the Congress," not so complete as Lind's, but of great value in helping us to understand the situation from the English point of view. These pamphlets have been seldom, if ever, used by historians; and with their aid and such other information as I can gather, I shall now make a modern analysis of the charges, and try to accomplish the very difficult task of candidly considering both the patriot and the English side.*

It is important for the reader to remember that the key to the whole situation is that our people or, to be more accurate, the patriot party among them, at the period of the Revolution, did not want to be ruled by a government three thousand miles away, no matter how well or beneficently

*American Archives, 5th series, vol. iii., p. 1009 note. I have obtained much light from Mr. Herbert Friedenwald's "The Declaration of Independence" reprinted from the International Monthly for July, 1901. See also Hazleton's "Declaration of Independence."
that government fulfilled its task. Everything that government did in the way of control was distasteful to them; and it is impossible to consider or decide many of the subjects of controversy on their merits, because it was entirely a question of point of view. From England's point of view of a great and obedient colonial empire many of the things she did were perfectly right and justifiable and the same substantially that she does now in her modern empire. But our patriot party totally rejected that idea of empire and so practically everything England did was to them entirely wrong. The great point against which they protested namely, the complete authority of Parliament has ever since our Revolution been accepted without question by England's colonies and the modern constitutional text books, like those of Todd and Jenkyns refer to it again and again as the cardinal foundation principle on which all rules and regulations of the colonial relation rest. England to this day taxes without their consent, and without representation millions of people in India as well as in the crown colonies.

"The legislative supremacy of Parliament over the whole of the British dominions is complete and undoubted in law, though for constitutional or practical reasons, Parliament abstains from exercising that supreme legislative power. This doctrine is quite consistent with the very effective indirect taxing power and financial control which, as will be mentioned below is exercised in practice by the Home Government over British India and the crown colonies." (Jenkyns, "British Rule & Jurisdiction Beyond the Seas" p. 10.)

But all these questions will, it is hoped, appear more clearly as the twenty-eight charges are analyzed one by one.

1. "He has refused his assent to laws the most wholesome and necessary for the public good."

This statement was criticised in England as too vague and general; it might mean anything and no one could tell exactly what it meant. Laws passed by a colonial legislature could be vetoed by the governor and, if they escaped his veto, the king, except in the instances of Rhode Island
and Connecticut, could disallow the laws usually within a
period of six months or three years, and in New York at
any time. Meanwhile, until thus disallowed by the king
the acts of the colonial legislatures had all the force of laws.
This method of disallowance still prevails in all the British
self-governing colonies, and the period is sometimes two
years and sometimes no limit, is set in which the home
government can disallow a colonial law.*

The government under George III. had disallowed, Lind
said, comparatively few colonial laws. Previous kings had
often disallowed laws for various reasons; but it is probable
that the framers of the Declaration referred only to laws
disallowed by George III. since he ascended the throne in
1760. They made the charge general for the probable reason
that to particularize would only raise useless discussion and
with a general charge the patriots of each colony could
assign under it any disallowance to which they had had
a particular objection. Paper money acts passed by the
colonies had been allowed to stand in previous reigns; but
in the reign of George III. the home government began to
prevent their passage because it thought that they were
neither "wholesome nor necessary" for the public good.
But the popular party in the colonies who wanted those laws
thought that they were both necessary and wholesome.
Most of the laws disallowed by the crown in previous reigns
raised the same difference of opinion, an irreconcilable differ-
ence between the crown and the popular party, each from
its own point of view believing that what it did was " neces-
sary and wholesome."

As the feeling in England in favor of better regulation and
control in the colonies increased, the colonial governors were
instructed not to give their assent to acts of the legislatures
granting divorces. South Carolina in 1760, New Jersey in
1768 and Virginia in 1772 had passed acts taxing the slave

1894, pp. 160, 174, 443; Jenkyns, "British Rule and Jurisdiction Be-
yond the Seas" p. 79.
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But these acts were disallowed by the crown, and the governor of New Hampshire had been instructed to veto all acts restricting the importation of slaves. England's object in not discouraging the introduction of slaves may have been that the increase of a servile class whose uprising or revolt would be greatly feared, would be a check on the rebellion of their masters against the home government. The colonial acts which attempted to check the importation of convicts from England were also disallowed and the middle and southern colonies compelled to submit to that system as Australia has been compelled to submit to it. All of these disallowances had been very much resented by the patriot party. Very likely the patriot party in each colony had its own particular grievances on the subject of disallowance or veto of laws; and in general the patriot party in America understood this complaint about disallowance to refer to interference from England, control at a distance of three thousand miles by an outside power which prevented the colonists from passing paper money acts, getting divorces, taxing slave or convict importation and doing other things on which their hearts were set.

On the other hand control by the mother country over legislation in colonies is absolutely essential to the continuance of the colonial relation, and England has never yet surrendered her absolute control of the colonial legislation of her empire. Our own congress has thus far retained the power to annul the acts of the legislature which has been allowed to exist in the island of Porto Rico. After our Revolution the British government continued to regulate in her remaining colonies by veto or disallowance such colonial matters as paper money, divorce or convict importation.* But the patriots of 1776 objected to all control of this sort. Their complaint on this head was so worded that it covered any or every act of disallowance by the crown. Their real

motive being, of course, that they wished to be entirely independent.

2. "He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended he has utterly neglected to attend to them."

This complaint, Lind said, was very unfair because it implied that the present king George III. had assumed a new power over the colonial legislatures, when, as a matter of fact, the practice of instructing a governor not to give his assent to certain classes of laws unless they contained a clause suspending their operation until his majesty could judge of their fitness and propriety, had been established by Queen Ann in 1708 and parliament in 1740 had addressed the king requesting the adoption of such a practice. The class of laws to which this practice was supposed to be confined, consisted of laws of an extraordinary nature affecting the trade and shipping of the empire, the prerogatives of the crown, or the property of the subjects of the empire in general. As the home government gradually developed its colonial system of empire it was judged important to have such laws not go into effect at all until considered and approved in England. If they went into effect immediately after their passage much mischief, it was thought, might be done to important imperial interests, during the time of their transmission to England, examination by the home government, and return of disapproval.

In the case of ordinary laws which after having the assent of the governor were not disallowed by the crown for many months or a year the colonists had the advantage of living under their favorite law during that time; and after its disallowance by the king it was entirely possible with the help of a friendly governor to pass the law over again and live under it for another period until again disallowed by the crown.* But in the case of laws involving

great imperial interests it was deemed important not to let the colonists live for even the shortest period under such a law enacted solely by themselves, and so, the device was adopted of instructing the governors not to consent to such laws unless they contained a clause suspending their operation until the king's pleasure should be known. This device was also supposed to be a convenience to the colonists; for if the plan had been adopted of transmitting to England for approval a copy of their important laws before receiving the governor's assent, so much time would elapse before the law, if approved, could be returned that the colonial legislature would have adjourned, and might then be under the necessity of again debating and passing the law at its next meeting. All such inconveniences were, it was said, entirely avoided by the suspending clause.

If the king and his ministry objected to the law they could simply by doing nothing about it prevent its going into operation, which Lind said, was merely a mild withholding instead of a stern refusal of assent, and not to be called neglect as the American Congress described it. It seems to have been generally believed, however, in America, that the home government had on a number of occasions neglected to examine into or do anything about certain of these "suspended laws." This suspending method was very naturally not liked by the patriot party and it still seems to Americans a somewhat unpleasant method of restraint because a law passed in that way was so to speak killed in its passage unless the crown should see fit to revive it. But it was a good arrangement for the dominant country, because if the home government became suspicious of any class of laws, which a popular colonial party wanted, it was easy to insist on a suspending clause to gain time for consideration and, if necessary, allow the "suspended law" to remain suspended.

The suspending method was not abandoned by England after our Revolution, and is still used in her colonial governments without any apparent protest from the colo-
nies. In fact, they profess to approve of it as a conserva-
tive and steadying force; so totally different are they in
temperament from our ancestors of 1776.*

The suspending clause is also still directed to be used for
the same subjects that it was supposed to be used for in our
colonial period, namely, matters of imperial concern, cur-
cency, army and navy, the prerogatives of the crown or the
general rights or property of subjects of the empire. By the
British North American Act of 1867 each lieutenant gov-
ernor of a Canadian province in addition to his veto power,
may also reserve a bill and prevent it becoming a law until
the Governor General of the Dominion approves of it; and,
in like manner the Governor General may reserve a bill of
the dominion parliament and prevent it becoming a law
unless within two years the home government approve of
it. This method of direct suspension by governors would
have been more exasperating to our people in 1776 than the
method then in vogue.

Since our Revolution all these methods of control of
colonial laws, whether by veto of a governor, disallowance
of the crown, or suspending clause have worked more
smoothly in Canada and Australia because the people have
been of a milder temper than ourselves and so scattered
and insignificant in numbers compared with England, that
complete control of them was comparatively easy in spite
of their remote situation. In our time steamers and the
telegraph have gone so far in annihilating distance that
with England's enormous increase in population, power and
organized experience, the government of her dependencies
has become easier than ever and can be managed with
greater delicacy.† The overwhelming force which now
stands behind the gentlest hint from the British Govern-

2, 331, 332; Todd, "Parliamentary Government in the British Colo-

† See Mr. Lucas's introduction and notes to Lewis on Dependencies,
edition of 1891.
ment is an element, not often openly mentioned, but always present in the situation. Modern methods are more cautious and diplomatic. The two parties understand each other and there are comparatively few disallowance because the accumulation of precedents and rules enable it to be usually well known beforehand what will be disallowed.

Disallowances are usually arranged so as to appear to be in the form of mutual agreement. The colonists are consulted and asked to offer suggestions or equivalents in the same manner that our people were consulted about the stamp act before it was passed, and told that if we objected to it we were at liberty to suggest an equivalent or some other method of taxation. Modern British colonists are more willing than we were to submit to what has been called “the paternal oversight of his majesty’s government,” accept warnings and hints, amend laws returned to them for modification, pass the legislation—which the colonial office desires, and at a word from the home government abstain from going too far. Actual disallowance of laws is avoided by pointing out objections to a colonial act, “and if they are removed by the colonial legislature within two years no disallowance takes place.”*

But the Adamses and the Jeffersons were never able to appreciate this beneficent and paternal method. Since 1865 a still further check has been put on colonial legislation by an act of Parliament passed in that year providing that all colonial legislation is void which conflicts with the provisions of any act of parliament applying to the colonies.† In reading over the hundreds of pages describing the modern British colonial system of customs and precedents one cannot but feel that our people were not of the sort to be willingly entangled in such a beautiful silken net. The home government assured them that the “sus-

† Todd, supra, pp. 155, 156, 171, 241.
pending clause” rule applied only to the large subjects of trade, shipping and other matters of the empire just as in modern times there has been a rule that the home government will at any time interfere in the internal affairs of the most self-governing colony “in questions of an imperial nature,” “in the interpretation of imperial statutes,” or when “disagreements have arisen between members of the body politic, in the colony, concerning their respective rights and privilege.* But those large so-called imperial subjects of trade and shipping were the very ones about which our ancestors wished to legislature as they pleased. It did not satisfy their ambition and national feeling to be confined to the little things; and they also objected to the suspending clause because they said it crippled and impaired the full freedom of debate, decision and enactment in their assemblies.†

The rule that only laws of an extraordinary nature relating to the king’s prerogative, trade, shipping, property, of subjects, or other matters of imperial importance should be passed with a suspending clause, was very elastic, and capable of wide interpretation. A dominant country easily sees dangerous tendencies in almost any law passed by a popular party in an independence loving colony. For example, an attempted law of the New York assembly in 1759 empowering justices of the peace to try minor cases, was in England naturally considered of grave importance as affecting the administration of justice in a colony where the Justices of the Peace were believed to be often illiterate and the mere creatures of the members of the assembly. The governor was instructed not to assent to such a law unless it contained a clause suspending its operation until the crown officials could examine and consider its effect.

So also, in 1769, the governors were instructed not to assent to any law establishing a lottery unless it contained

the suspending clause. Lotteries were in universal favor in America in those times, and for many years after the Revolution. Even within the recollection of the present generation, the state of Louisiana had a regular lottery system established by law and managed by some of her most prominent citizens. Before the Revolution lotteries were a very important interest in both the economic and social life of the colonists and were used for raising money for all sorts of religious, public or private purposes. But in England good people, reformers and the government, looked upon the American lottery system as very demoralizing, and as part and parcel of the spirit which created the depreciated paper currency. We would in the same way look upon a lottery system in Porto Rico or the Philippines, as an evil to be corrected and be ready to say in the language of the instructions to the governor of Virginia in 1771, that such a practice "doth tend to disengage those who become adventurers therein from the spirit of industry and attention to their proper callings and occupations on which the public welfare so greatly depends."*

Our patriot ancestors, preferred to be their own judges and censors of morals. They felt responsible to themselves alone, and not to far-away England, for any evil results of the pleasure or profit they took in gambling. A very large proportion of all the colonial laws which the home government disallowed, either in the ordinary way or by a suspending clause, involved this question of point of view. From the point of view of the mother country the disallowance seemed necessary for the sake of colonial morals, or for the better administration of justice, or to prevent the colonists from breaking up the empire and gradually becoming independent. From the colonists' standpoint, the disallowance was wrong because it interfered with their desire to regulate their own morals and decency or gradu-

*The President of the United States is reported on May 12, 1904, to have instructed the Panama Canal Commission to annul lottery privileges and gambling concessions within the canal zone.
ally to become independent. England's control of their legislatures was unpleasant to them and they developed this feeling of dislike of control until disallowance or suspension by the home government seemed to them a monstrous wrong, an outrageous and unbearable tyranny, and their language took the form of passionate vehemence which Jefferson skilfully expressed in the Declaration of Independence. It is useless to debate the question on absolute merits because the debate becomes interminable. There is only one question to settle, and that is, whether you favor independence or favor imperial restraint for some particular country; and having settled that question in your mind you take your side and accumulate your arguments.

3. "He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them and formidable to tyrants only."

The meaning of this was that as the population of the colonies spread their assemblies passed acts forming new counties and townships in districts that had been wilderness; and the act forming a new county would naturally often allow it a certain number of representatives in the legislature. Before the close of the French war the English government appears to have had no objection to this admission of new representatives to the colonial legislatures. In fact, in New Hampshire in 1748 the home government had insisted that representatives be allowed to certain newly-created townships although the legislature was opposed to allowing such representation. The legislature of Pennsylvania, which was in the control of the Quakers and Germans, was always accused of unfairly withholding representation from the new frontier districts peopled by the Scotch-Irish. But after 1764, when the patriot party was evidently growing in strength and resisting the remodelling which England wished to enforce, the home government not unnaturally became chary of allowing representatives from newly-created counties, because those representatives
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were very apt to be of the patriot or rebellious party. Accordingly, the acts creating the new counties were usually disallowed unless they made no mention of representation. Such disallowance had occurred in New Hampshire, Massachusetts, New York, New Jersey and Virginia. Jefferson as a leader of the patriot party in Virginia had felt this check to his party’s strength and he worded the clause in the Declaration in warm and resentful language. His phrases were criticized in England as very exaggerated and unfair because they implied that representation in the legislature had been diminished, or that a right already existing had been taken away, whereas, there had been no diminution and no right had been taken away. A privilege had merely been withheld for a time from a new district which never had it. It is again a question of point of view. England saw that the colonies were trying to escape from her and she tried to stop them.

4. “He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of the public records for the sole purpose of fatiguing them into a compliance with his measures.”

5. “He dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.”

6. “He has refused, for a long time after dissolutions, to cause others to be elected whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the dangers of evasions from without and convulsions from within.”

These three charges (1) calling together legislative bodies at unusual and distant places, (2) dissolving such bodies for opposing crown measures and (3) refusal for a long time to cause other legislatures to be elected, may be treated together. As to the first, the Massachusetts governor, as the representative of the crown, had in 1768 called the legislature to meet at Cambridge four miles from the usual
place of meeting in Boston. This had been done, the defenders of the ministry said, when the British Troops took possession of Boston and the legislature had protested against holding its sessions or transacting business while surrounded by troops. It had held its sessions in Cambridge for four years from 1768 to 1772, when it returned to Boston. Some of the patriot leaders, notably Hancock and Otis, had not been adverse to the legislature holding sessions in Cambridge, and favored its remaining there. The legislature had often before met in Cambridge, when they had been alarmed with fear of the small-pox in Boston. In a similar way the South Carolina legislature had been called to meet in Beaufort instead of Charleston, during the political disturbances after the repeal of the stamp act.∗

As to dissolution of legislatures for opposing his invasion of rights, the Virginia Assembly had been dissolved in 1765, after passing Patrick Henry’s resolutions against the stamp act on which he made his famous speech “Caesar had his Brutus, Charles I. his Cromwell, and George III. may profit by their example.” In 1768 the Virginia, the Massachusetts and the South Carolina legislatures had been dissolved for refusing to recind, ignore or treat with contempt the famous Massachusetts circular letter urging the patriots in every colony to united action against the British Government; and there were other instances at the same period of dissolution intended to check the rebellious or patriotic movement.

As to refusing for a long time after such dissolutions to cause other legislatures to be elected, there were naturally several instances, because the crown, having dissolved those legislatures for doing what in England, was considered treason and rebellion, did not see the necessity of having another legislature elected which would, in all probability, immediately have to be dissolved for similar rebellious acts. The consequences of “invasion from without and convulsions within” do not seem to have occurred unless the

convulsion of the revolutionary movement itself and the invasion of British troops to suppress it, be counted.

In fact, all three of these charges refer to actions by the crown after the revolutionary movement had begun, and the patriot party was everywhere resisting control and struggling for more privileges and ultimate independence. To check this movement, the crown, through the governors, exercised the right it had to hold legislatures at a new locality, dissolve them, and not call them again until such a time as it saw fit. We thus again return to the original question, whether it was right for the colonists to seek independence or right for England to stop such a movement.

7. "He has endeavored to prevent the population of these states; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land."

The history of this complaint is curious. Before the French and Indian Wars closed in 1763, the colonies seem to have been in the habit of naturalizing foreigners. But with the desire for better regulation of the colonies this practice of provincial naturalization was largely stopped because it seemed to the home government, that naturalization, if it was to be allowed at all, must be an imperial affair. England at that time was not much inclined to naturalize the citizens or subjects of any nation. This complaint about naturalization was presumably confined to the middle and some of the southern colonies. The New England colonies were of very pure native stock, and after the year 1640 received little or no immigration, even from England. They resented the coming of foreigners from Europe almost as much as they resented the convicts from England and they were equally successful in excluding both classes. A few of the French Huguenots were cautiously received by them, because the Huguenot religion seemed to be almost as orthodox as Puritanism.

Pennsylvania, however, was largely populated by Germans
and New York, New Jersey and Maryland had received and welcomed foreigners, who, before the year 1699, were naturalized by the governors without the authority of parliament or of the colonial legislatures. This process of naturalization, or denization, by the governors was in imitation of the same process performed in old times, by the king, who had originally had the sole right of turning foreigners into British subjects. The right had always been sparingly used in England, for naturalization was in those days regarded as a rather dangerous privilege to bestow indiscriminately. The English were intensely national and bent on the development of their own peculiar qualities. Roman Catholic foreigners were particularly objectionable, and were refused naturalization because they were considered dangerous to the stability of the government.

In 1699 the colonial governors were forbidden to naturalize any more foreigners, and this change seems to have been caused by the growing convictions that such an important power as the creation of subjects and citizens, could not be delegated to a governor. It was even doubted whether the King should be allowed to retain it. Parliament gradually assumed the right and private naturalization bills became more or less numerous at every session. After the governors were prohibited from granting naturalization, the colonial legislatures regulated the privilege, granting it usually, as it was granted in England, by special acts naming the persons to whom it was granted. In 1740 an act of parliament provided that Protestant foreigners after a residence of seven years in the colonies, should have the rights of natural born subjects. But the immigrants seldom, if ever, took advantage of this act because seven years was too long for them to wait when they could be naturalized by a colonial legislature immediately or within a year.

It was held in England that naturalization by one colony did not give citizenship in any of the other colonies or in England; nor would it give the foreigner the right to own or trade in British or colonial vessels which, by the naviga-
Naturalization laws, were to be confined to the natural born subjects of the empire. A case finally reached the courts in which a foreigner naturalized by New York bought a vessel which was seized and confiscated in a court of admiralty, because a foreigner could not own such property. The lawfulness of this seizure of the vessel was confirmed by the Privy Council on the ground that a local and subordinate legislature could not extend to a foreigner the provisions of an act of parliament.

Naturalization was valuable in those days, because without it the foreigner could not obtain a title to land which he could convey to any one else or leave to his children. The right to vote which we now always associate with naturalization, was not then of so much importance. As land ownership was the object of every foreigner who came to America, and an absolute necessity to him if he was to prosper, the middle colonies and Maryland naturalized immigrants for several generations without incurring the disapproval of the home government. But after the French war was over and stricter regulation of the colonies decided upon, colonial naturalization acts were usually disallowed by the crown because there seemed to be no other way of preventing these naturalized foreigners from owning vessels and taking part in the trade contrary to the navigation acts. Colonial naturalization had become part and parcel of colonial smuggling; and if the navigation and trade laws were to be enforced colonial naturalization must be stopped. Finally, in 1773, an order in council directed the colonial governors to veto all naturalization acts that should be passed by the legislature.*

The governors had also been instructed to cease granting lands to any foreigners that had previously been naturalized, and the reason for this prohibition seems to have been that in view of the increasing tendency of the colonists to

rebellion and independence, it was hardly advisable to allow the land to pass into the hands of foreigners, who coming from countries hostile to England, would be likely to strengthen the patriot party and encourage separation. Lind and Hutchinson argued that the British government was very far from desiring to interfere with the increase of population in the colonies; and it was certainly true that in the old days the immigration to Pennsylvania and the middle colonies had been encouraged rather than discouraged by the home government. The home government, Lind said, wished to increase the number of British subjects in the colonies, but did not wish to increase the number of rebels. The check on naturalization was, therefore, intended only as a check on smuggling, rebellion and independence. England wished to stop altogether the creation of full-fledged citizens out of foreigners who had just landed in America, and bring the question of naturalization entirely under the act of parliament which required seven years' residence.

Since the Revolution and down to quite recent times this subject of naturalization in her colonies has been a troublesome one to Great Britain. As she was unwilling to recognize the American doctrine of expatriation and held to the old monarchial rule of once a subject always a subject, it was difficult for her to look favorably on naturalization. Some of her colonies, again began to pass local naturalization laws; and in 1847 this was again regulated by confining the rights of such naturalization to the particular colony where it had been granted. Since then there has been further controversy over the question and other regulations have been adopted which need not be discussed in this place.*

The last clause of the complaint which speaks of checking migrations to America by "raising the conditions of new appropriations of land" refers to the conditions of sale

and settlement of wild, unplanted crown lands in America. The conditions had been made more restrictive and the price raised after the revolutionary movement began, because the people who settled in those new communities seemed to add strength to the patriot party and gave rebellion a stronger foothold in the western mountainous regions where it could be with difficulty subdued. "Even a total restriction of such grants" says Hutchinson, "when the danger of revolt was foreseen, might have been a prudent measure: it certainly was justifiable and no one has a right to complain."

After our Revolution the British Government continued to control and make regulations for the sale of public or waste lands in the colonies until after the Canadian rebellion of 1837. Lord Durham in his report on that rebellion recommended that the sale of colonial public lands should still be retained in imperial control. But since then Canada and Australia have been given entire control of their waste lands.*

The clause in the complaint which speaks of refusal to assent to laws encouraging immigration seems to refer to an act of North Carolina of 1771 exempting emigrants from all taxation for four years. It was disallowed by the crown because it would draw people from Scotland and injure the agricultural interests of Great Britain and Ireland.

8. "He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers."

The wording of this complaint seems to imply that on several occasions the king had refused his assent to laws establishing courts, and that in consequence justice had not been administered or had been considerably delayed or impaired. But particular instances are difficult to find. All the colonies had law courts, and while there may have been disputes as to their organization, I have been able to find only one instance in which a colony was deprived of courts by the king disallowing the law establishing them. In 1768 a

law had been passed in North Carolina establishing superior courts to be in force for five years and providing that the property of persons who had never been in the colony could be attached on the suit of a creditor. This last provision for an attachment was disapproved by the home government; but the law was not disallowed. The assembly was merely requested, as British colonial assemblies are often requested in modern times, to amend the law in this particular. But unlike modern colonial assemblies the North Carolina assembly would make no amendment. The governor was accordingly instructed by the crown not to assent to any future law containing the objectionable provision about attachment.

When the five years for which the law was to be in force expired in 1773, the assembly re-enacted it; but the governor, under instructions from the crown, refused his assent unless the law contained a clause suspending its operation until the king's pleasure should be known. When finally, passed with the suspending clause it was never approved by the crown because it contained the attachment provision. There were, therefore, no courts in the colony. The governor established courts on his own authority; but as the assembly refused to vote salaries for the judges there were no courts in North Carolina from 1773 until 1776, when the patriots established them as part of the revolutionary movement. *

9. "He has made judges dependent on his will alone for the tenure of their offices, and the amount and payments of their salaries."

This question of the independence of the judiciary had been a subject of much controversy. The judges were in most colonies dependent on the governor and crown for their tenure of office, but the colonial assemblies voted them their salaries from year to year. The crown wanted the

*Friedenwald, "Declaration of Independence," International Monthly, July 1901; Martin, "History of North Carolina," vol. ii, Chap. ix. Hutchinson says in his pamphlet that there was no instance except this one in North Carolina.
assemblies to fix permanent salaries on the judges, but this the assemblies refused to do. Englishmen, believed that the assemblies refused to fix permanent salaries, because the popular party in the colonies wished to keep the judges under their control by giving or withholding their salaries from year to year, so that the judges would not firmly enforce the rights of the crown or prevent the smuggling by which so many of the colonists grew rich. The home government accordingly refused the suggestion of the popular party that the judges be appointed for life or good behaviour, because with rebellion increasing in the colonies the government was not inclined to do anything that would lessen the dependence of the judges upon the crown.

Finally, as the revolutionary movement progressed the governor of Massachusetts informed the assembly of that province in 1773 that they need not provide salaries for the judges that year, because the king intended to pay them. This was an attempt on the part of the crown to make the salaries permanent, and is referred to in the last clause of the complaint where it says that the king has made the judges dependent on him “for the amount and payment of their salaries.” It was the intention of the king to have parliament support his action by paying the salaries and make such payment permanent; but the movement of the Revolution progressed so rapidly that this intention could not be fulfilled.*

10. “He has erected a multitude of new officers and sent hither swarms of officers to harass our people and eat out their substances.”

These offices and swarms of new officers consisted of the four new admiralty courts and the commissioners of customs with their headquarters in Boston. These officers were established, to put down smuggling and breach of the trade laws. But the colonists thought the trade laws were improper and unfair restrictions on their commerce; they practiced smuggling so extensively that the laws were a

dead letter; and they, of course, did not want new officials sent out to enforce those laws. Lind and Hutchinson criticise what they consider the unfairness and extravagance of this complaint. The new commissioners of customs were only five in number and their clerks and underlings did not number, Hutchinson said, more than thirty or forty additional officers, which were the swarms supposed to eat out the substance of three million people.

The former commissioners of custom had resided in London, where all American customs affairs had to be settled at great delay and expense, and the colonists had complained of this. The establishment of commissioners in America was, Englishmen said, to remove the cause of this complaint as well as to check the smuggling. The commissioners' salaries were not paid, it was said, by the Americans; nor were the salaries of the officers of the four new admiralty courts to be paid by them. The salaries were all paid out of receipts from the customs and forfeitures. There had formerly been so few admiralty courts and at such great distances from one another, that the administration of justice was so remote as to be scarcely attainable. The new admiralty courts, Englishmen said, would remedy this grievance. Only one class of persons, said Lind, could complain of either the admiralty courts or the commissioners. "Will the Americans confess, that the class of smugglers is so numerous in that country as to entitle them to be called by way of eminence, the people."

But one can easily see that Jefferson's way of phrasing this complaint was popular and well suited to the purpose of the Declaration. It was true that no colony legislature voted these new officers their salaries; but if their salaries came out of customs receipts and forfeitures they seemed to the colonists to come out of the substance of the people. The colonists wanted to be rid altogether of the navigation and trade laws; and if they could not get rid of them by repeal they intended to go on smuggling and breaking them, enjoying free trade as of old, with no customs
receipts or forfeitures. The popular argument also strove to show that the clerks and underlings of the commissioners might be indefinitely increased; and as forfeitures and customs receipts increased the clerks would eat up more and more of the substance of the people.

11. "He has kept among us in times of peace, standing armies without the consent of our Legislatures."

The demand of the patriots that no standing army should be kept in a colony without the consent of the legislature of that colony was one of the great questions of the Revolution. It was equivalent to a demand for independence. If granted it would at once break the colonial relation. If England was to have colonies at all she must not be obliged to consult a colony before placing troops in it to protect it from foreign invasion or its own rebellion. England had always kept troops in her colonies; but they had not been numerous except when used to protect the country from the French and the colonists had never objected to this. Now, however, the patriot party saw that under the remodeling plans the troops could be used to reduce the American communities to the condition of real colonies. England has never relinquished her right to keep troops in colonies. For nearly a century after our Revolution she kept large bodies of troops in all her colonies, even in those which had been granted self-government, and the annual cost of this colonial standing army was nearly $20,000,000 of which the colonists themselves contributed less than $2,000,000. Few of the colonies had any effective militia or local force of their own.

In 1859 in order to lessen the cost, encourage the colonies to bear a larger portion of it and develop in them more spirit and interest in self defence, a gradual withdrawal of the standing colonial army was undertaken. This withdrawal took place principally between the years 1867 and 1870.* There is now no standing army kept in the Aus-

tralian colonies, and only a small one in Canada. But South African colonies and the Crown colonies are still occupied by a considerable number of regular troops and the standing army in India is said to number over 70,000.

12. "He has affected to render the military independent of, and superior to the Civil Power."

The instance here referred to is presumably the appointment of General Gage as Governor and commander-in-chief of Massachusetts in 1774, for the purpose of suppressing the rebellion against British authority. It is useless to discuss whether this was proper or not because it involves the main question already often touched upon, the right of revolution, the right of a colony to seek independence. If, as the patriots claimed, the colonies had always been independent states under a mere protectorate from the crown, then the right of the crown to override the civil authority in Massachusetts was questionable.

To render the military superior to the civil power in time of peace is unconstitutional according to both American and English law. But the military is often made superior to the civil power in times of war or rebellion. This was a great question in our own Civil War of 1861. The important question is usually what constitutes such a state of war or rebellion as will give the military power the superior right. The British government believed that it had the right to put down rebellion in Massachusetts by military control, because it could be put down in no other way, and the patriots, of course, believing in their own rebellion did not believe that it should be subdued by military force.

13. "He has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknowledged by our laws, giving his assent to their pretended acts of legislation."

This complaint was Jefferson's way of stating the final argument of the patriot party that parliament had authority over the colonies neither in taxation nor in any other respect;
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and that now even the acknowledged authority of the king over the colonies must be broken because he had, among other offences, assented to the authority of parliament over the colonies. The argument assumes, of course, that the colonies had always been semi-independent states, or protectorates as they are now called, outside of the jurisdiction of parliament and merely under the general protection of the crown. Following this complaint are nine instances of the "acts of pretended legislation" to which the king had improperly assented. These nine acts had been passed since the year 1763, and had been the great subjects of controversy during the revolutionary movement.

The numerous acts of parliament relating to the colonies passed previous to 1763 are not referred to in any way and are not mentioned as acts of pretended and void legislation or as acts improperly assented to by any king. Possibly Jefferson would have said that as the patriot colonists were breaking away from a particular king called George III. they were concerned only with the acts to which he had assented. But Englishmen naturally called attention to the numerous previous parliamentary acts, the post office act, and many others which had been accepted by the colonists as beneficial and never objected to as void. Englishmen also reminded the colonists of the stamp act congress and other bodies which had admitted that parliament had jurisdiction over the colonies in all matters except internal taxation. Such statements were, of course, effective arguments in England, and were used to the utmost to make the American patriot cause appear ridiculous. The nine instances of "pretended legislation" must be briefly described.

14. "For quartering large bodies of armed troops among us."

This complaint is not to be confused with a previous one about standing armies in the colonies. The previous complaint dealt with the right of Great Britian to have a standing army in a colony. The present complaint deals with the question whether Great Britian or the colony
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should pay for the maintenance of that army. As England had always exercised her right to keep troops in colonies, there must be barracks or buildings owned by England or provided by the colony in which the troops could live; and it seemed to many Englishmen that a colony should provide part of the food necessary for the troops stationed in it. Barracks of some sort had been always obtained for the troops previous to 1764 and acts of parliament were passed giving and regulating authority for this purpose. In 1765 a clause in the annual mutiny act provided that the legislature of each colony should furnish barracks, fires, candles and other necessaries for the troops, stationed in it. The New York legislature complied with this act in all respects except furnishing vinegar, salt and beer, which it refused to supply, and as a punishment its functions were suspended by parliament until it yielded and complied in all respects, with the requisition. As the patriot colonists objected to the stationing of troops in a colony without its consent, they also, of course, objected to quartering and maintaining them at a colony's expense.*

15. “For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these states.”

This refers to an act of parliament passed in 1774, for the “impartial administration of justice” which provided, that officers of the revenue and persons acting by authority of magistrates who, in putting down riots and rebellions in the colonies should be accused of murder, should be taken for trial to England or to a more peaceful colony. The

*A letter addressed to the Canadian Government, inquiring if in modern times Canada took any part in maintaining British Troops stationed within her borders, was favored by the following reply of June 8, 1903: “At the present time there are British troops stationed at Halifax, N. S. and Esquimalt, B. C. The Esquimalt Garrison is maintained jointly by the Imperial and Canadian Governments. This is the only case in which Regular Troops are, or have been, maintained to any extent by the government of Canada or the government of the several provinces which now form the Confederation of Canada.”
government feared that any one accused by the colonists of murder in quelling riots could not be fairly tried in the colony where the riot occurred. He would be convicted as a matter of course, by any jury drawn from a people, most of whom sympathized with the riot and believed that the acts of parliament under which the riot was put down were void.

The short way, Lind said, of dealing with such a situation would have been to declare martial law and suspend the power of the courts in the rebellious colony. But government, he said was more lenient. The courts were not suspended; martial law was not declared; the mode of trial was still left to a jury. Care only was taken to obtain an impartial jury by a change of venue. This method had been practised in rebellions in Scotland and other places. The provision moreover, was temporary and to be in force only three years.

Jefferson's way of wording the complaint by calling such a trial a mock trial and assuming that anyone killed in putting down a riot or rebellion would be murdered, was certainly effective as a popular argument. Lind replied by saying that to allow such a person to be tried by a jury of insurgents would be "to command the innocent to be murdered by a mock trial." It does not, however, appear that the act here complained of was ever enforced. The colonists of course, argued that such a statute was entirely unnecessary and in proof they pointed to the trial of the soldiers who shot the citizens in Boston, March 5th, 1770. The British government had voluntarily surrendered these soldiers to the courts of Boston for trial; most of them were acquitted, and two lightly punished.

16. "For cutting off our trade with all parts of the world."

This complaint might be taken as applying to the whole series of navigation and trade laws restricting colonial commerce which had been passed long before the reign of George III. and which I have already discussed at length in The True History of the American Revolution. But it
probably refers only to the recent act of parliament called the Fisheries Act. Both Hutchinson and Lind treat it as referring only to that act. That act was intended to help put down the rising rebellion by prohibiting and preventing the colonies from trading with any country except England. It therefore, involves the old question of whether the colonies were rightfully rebelling. Englishmen called attention to the provision of the Fisheries Act, that it was to last only until the colonists returned to their allegiance and, therefore, the colonists had it in their power to bring it to an end at any time.

The patriot colonists it was said, had enforced non-importation resolutions and prevented England from trading with her colonies. Had not England then the right to cut off the trade of the colonies with the outside world in order to bring them to their senses? “That they attempted only to cut off our trade with our own colonies,” said Lind; “that they did not attempt to cut off our trade with other quarters of the world, they will, I presume, allow to have proceeded from weakness, not from good will.”

17. “For imposing taxes on us without our consent.”

This brief sentence covered the complaints against the taxing acts, the stamp act, the paint, paper and glass act, the tea tax and others, about which there has been so much controversy and which I have discussed in the volume already mentioned.

18. “For depriving us, in many cases of the benefits of trial by jury.”

This complaint refers to the courts of admiralty and vice-admiralty, which could try for smuggling and violations of the stamp act, navigation and revenue laws without a jury. Admiralty courts without juries had been established in the colonies ever since 1670, were used in England, and our own United States District Courts still act without juries in admiralty proceedings. Some of the colonies, Hutchinson said, allowed violations of their own excise laws and also violations of some other laws to be tried without juries. The mere
establishment of admiralty courts in the colonies could hardly in itself be called depriving the colonists of the right of trial by jury because such courts have always been acknowledged exceptions to that right of trial. There had been, however, at one time, considerable controversy in England over the jurisdiction of these courts. As originally constituted in the reign of Edward III. their jurisdiction was quite extensive. It had been restricted in the reign of Richard II. and was not enlarged again until the reign of Victoria. Some of this uncertainty as to the exact limits of admiralty powers, extended to America.

In the reign of William III. an act of parliament was passed providing that any one who cut down or destroyed the great white pine trees which had been marked and reserved in the forests of Maine, for masts for the royal navy could be tried in admiralty without a jury. This was an unusual extension of admiralty jurisdiction which was considered necessary because it was almost impossible to convict any one before a jury when the whole community from which the jury would be drawn, sympathized with the offender. The mast trees were usually marked with the "broad arrow" the ancient symbol for designating royal or government property, the "King's own" as Englishmen were fond of calling it; and the symbol was always spoken of with great reverence. But the Maine woodsmen far removed from monarchical influence, imitated the broad arrow on any tree they wanted to reserve for themselves and prevent their neighbors from cutting; and the crown officials found it impossible to find a jury that would convict any one for the impiety of counterfeiting the "broad arrow." *

In the same reign of William III., in order to suppress piracy which was so prevalent on the American coast, pirates could be tried and convicted by a majority of seven commissioners appointed by the king. This was intended

to take the whole question of the punishment of pirates away from both courts and juries in the colonies where so many of the people were believed to be in league or sympathy with the prosperous sea robbers. As these instances occurred before the reign of George III. Jefferson and the Congress may not have had them in mind as intended to be covered by the complaint. The instances in the reign of George III. were, first of all, the stamp act of 1765, which provided that violations of its provisions could be punished in admiralty, and this seemed necessary if the stamp act was to be executed at all, for no American jury would convict anybody under it. The stamp act also provided that all suits for violations of the trade laws could also be brought in admiralty. There was much complaint of this because the admiralty courts were few and widely separated and litigants would be put to great expense and inconvenience. This and other considerations caused the repeal of the stamp act; and in 1768 another act provided that all suits under the trade laws could be brought in courts of Vice Admiralty to be appointed by the Crown. Under this act, in order to make the admiralty courts numerous and convenient, vice admiralty courts were established at Halifax, Boston, Philadelphia and Charleston. Jefferson and the Congress undoubtedly had in mind this act of 1768 and the stamp act.

After 1761, if a seizure for violating the trade and navigation laws had been held void and the vessel or property released, the owner of the vessel or cargo would often sue the customs officer before a common law jury for damages for making an unlawful seizure. As the juries usually sympathized with the owner of the vessel or cargo, they were apt to find heavy damages; and in this way the smuggling colonists were able, it was said, to terrorize customs officials and prevent seizures. But a recent act of parliament had established the rule that a customs official could not be sued for damages before a common law jury for making an unlawful seizure unless the admiralty judge
who had held the seizure unlawful had also certified that it had been made without probable cause. There was a popular outcry against this because it prevented the colonists revenging themselves by a jury trial upon the hated customs officers. Trial by jury has never been regarded so sacredly in England as in America. A nation with colonies or subject peoples necessarily finds herself obliged at times, to restrict the right of trial by jury among them or they will escape from her. England, for example, has always down into our own time, restricted with much arbitrary severity, the right of trial by jury in Ireland; and she would have had to restrict it with still greater severity before she could have conquered America.*

19. "For transporting us beyond seas to be tried for pretended offences."

This refers to two acts of parliament. The first had been passed in the reign of Henry VIII. and provided that a person accused of treason without the realm could be brought to England for trial. Several trials and punishments had taken place in previous reigns under this act, and parliament in 1769 reminded the king that this old law could be applied to the disturbances in America; but no one was ever transported or tried under it. The other act was a recent one providing that any one charged with setting fire to his majesty's ships, docks, arsenals &c. could in like manner be taken to England for trial. Both acts were, of course, intended to prevent colonial juries acquitting such offenders; but no action was ever taken under either of them during the Revolution.

20. "For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government and extending its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies."

This refers to the Quebec Act which allowed Canada no representative or self-government, or trial by jury, made the Ohio river her southern boundary, giving her the modern states of Ohio, Indiana, Illinois, Michigan, Wisconsin and Minnesota, and gave the French Canadians their Roman Catholic religion established by law and the French code of laws to which they had always been accustomed. It pleased the Canadians so well that it is supposed to have destroyed any interest they may have had in our Revolution. But there was a great deal of feeling against this act among the patriots not only because it set up in America a pernicious example of arbitrary government and the establishment of a hated religion, but also because it extended that system far to the southward, into the Mississippi valley as if to cut off the Protestant colonists from western advancement. The appeal in the Declaration to this feeling was strong and effective. Lind found himself powerless to argue against it and could only ask, “What have the revolted colonies to do with his majesty’s government of another colony. Canada has not rebelled, is not dependent on the revolted colonies or in any way associated with them. No regulation concerning another colony can rightfully find a place in the list of their own pretended grievances.”

21. “For taking away our charters, abolishing our most valuable laws and altering fundamentally the forms of our governments.”

This seems to refer to the act of Parliament of 1774, altering the Massachusetts charter as a punishment for the tea riot. The alteration prohibited town meetings except by permit; provided that the council be appointed by the crown instead of elected by the assembly; that jurors be selected by the sheriffs instead of elected by the people; that judges’ salaries be paid by the crown instead of by the legislatures; and that judges and executive officers be appointed and removed at the pleasure of the crown.

These changes constituted the only alteration of a charter
attempted during the reign of George III. and possibly this was the only instance Jefferson had in mind. But there had been numerous alterations of charters in previous reigns and these in the minds of Englishmen were precedents for the present alteration in the case of Massachusetts. Lind gave an interesting history of these precedents, and added that all the American charters then in existence were acts of the crown altering or repealing former charters. "If charters once granted" said he, "could not be altered, could not be repealed by the crown, the original Virginia charters would be still in force, and the inhabitants dependent on two trading companies residing in England."

The principle that a charter or colony government could not be altered by the home government without the colony's consent, was part of the new doctrine of the patriot party and assumed that the American communities were not colonies in the usual sense, but semi-independent states. The right of the mother country to alter or suspend a colony's charter or form of government is absolutely essential to the maintenance of the colonial relation. The right of Great Britain to do so has never been questioned in her colonies since our Revolution. She suspended the constitution of Canada in 1838, gave Canada a new constitution in 1867 by the British North American Act, and her known right and ability to alter, suspend or revoke as she pleases is one of the most powerful elements of her control. In fact, the modern so-called constitutions of her colonies are merely acts of parliament and may at any time be altered or repealed by subsequent acts of parliament.

22. "For suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever."

Two complaints may possibly be here combined in one. The first part of the sentence "for suspending our own legislatures” may refer, to the act of Parliament suspending the power of the legislature of New York until it consented to
furnish supplies of vinegar, salt and beer to the British regular troops stationed in the colony. The rest of the sentence undoubtedly refers to the Declaratory Act of parliament passed at the time of the repeal of the stamp act declaring that parliament had the right to legislate for and control the colonies "in all cases whatsoever." Both the suspension of the New York legislature and the Declaratory Act were valid and constitutional exercises of parliament's power according to the constitutional theory prevailing in England at that time and down to the present day; but they were, of course, contrary to the doctrine of government by consent of the governed adopted by the patriots.

The first part of the sentence "suspending our own legislatures" may possibly not have referred particularly to the suspension of the New York legislature, but to the general result of the Declaratory Act, which by reasserting the power of parliament to control the colonies in all cases whatsoever necessarily impaired or suspended the functions of all the colonial assemblies. This closes the nine complaints against the king for combining with certain persons, commonly described as parliament, to pass acts of pretended legislation affecting the colonies. The Declaration then goes on to give five more acts of the king which entitle the colonists to break from his allegiance.

23. "He has abdicated government here by declaring us out of his protection and waging war against us."

In the draft which the committee submitted to the congress, this complaint read, "He has abdicated government here, withdrawing his governors, and declaring us out of his allegiance and protection." The congress may have thought that it was hardly correct to say that the king had withdrawn his governors, because any of the royal governors who had withdrawn had been driven from their posts by force of either mobs or patriot troops. Nor was it correct to say that he had declared the colonists out of his allegiance. He had never done so in so many words. What
they meant to say was, that by making war upon them he had inferentially put them out of his allegiance.*

As amended by the congress the meaning of the complaint appears to be that the so-called colonies being really semi-independent states, were under the king only for purposes of protection from foreign invasion. Therefore, when he began to wage war against them he put them out of his protection, abdicated any functions or right of government he might have over them, and broke the allegiance they owed him. Allegiance and protection, the patriot party said, were reciprocal. One could not exist without the other. William Henry Drayton in his famous charge to the grand jury at Charleston in this same year 1776, expressed this view when he said that the "original contract" between the king and the colonists had been broken by George III. as soon as he began to make war upon the colonists "whose subjection to the king of Great Britain, the law holds to be due, only as a return for protection."†

The patriot colonists thought that the king had no right to compel them to a closer or any other relationship except that of a protectorate. If he attempted to compel them to a closer relationship that compulsion in itself would be a reason for breaking away from him altogether. Lind criticized the complaint because it gave the acts of a sovereign in suppressing a rebellion as the causes or excuses for the rebellion. It assumed that the rebellion was right and therefore, the sovereign must be wrong in attempting to suppress it.

24. "He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people."

†Gibbes, "Documentary History of Am. Revolution 1764-1776" p. 285. Drayton delivered this charge to the jury May 2, 1776; and it is another instance to show how the ideas and principles of the Declaration were in constant use among the patriots before Jefferson embodied them in the formal document.
This also merely means that the king was putting down a rebellion he believed to be wrong and that the patriots believed to be right. Vessels had been captured, the towns of Norfolk, Charlestown and Falmouth, now Portland, had been burned and a number of battles and skirmishes fought in which people had been killed.

25. "He is at this time transporting large armies of foreign mercenaries to complete the work of death, devastation and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation."

The "armies of foreign mercenaries" mean the 12,000 Hessians who were then on their way to America. Lind gives an interesting account of the foreign troops, or mercenaries so-called which England had employed in nearly all her wars, including the war which had saved the colonies from the French in Canada. Mercenaries had also been employed in suppressing rebellions in Scotland and Ireland. England, up to that time, had seldom had troops enough of her own to carry on any war of importance.* All troops said Lind, are paid and are in that sense mercenaries, and even the American patriots pay their troops. "The congress" he adds, "will not, I suppose, take merit to itself that instead of solid metal it pays with fleeting paper."

The rest of this complaint in the Declaration is a good description of the horrors of putting down a rebellion as seen from the patriot or liberal side. The crushing of an attempt at independence is invariably attended "with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation."

26. "He has constrained our fellow citizens taken captive on the high seas, to bear arms against their country, to

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become the executioners of their friends and brethren, or to fall themselves by their hands.”

This refers to the act of parliament of December 21, 1775, known as the Prohibitory Act, authorizing the capture and condemnation of American trading vessels and the impressment of their crews into the British service. The impressment of the crews was undoubtedly, an outrage not justified by the ordinary rules of war in putting down a rebellion.*

27. “He has excited domestic insurrection among us; and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.”

The exciting of “domestic insurrections” refers to Lord Dunmore, the royal governor of Virginia, who had offered freedom and weapons to all slaves who would join the British side. Why complain of this, at the end of your Declaration, Englishmen asked, when in the beginning of it you declare that all men are born equal. Is it for you to complain of the tyranny of giving freedom to a slave?

A nation at war with a slave-holding community will always offer freedom to the slaves as an obviously effective method of attack. It was one of the methods adopted for weakening the southern confederacy in our own civil war.

As to using the Indians to help put down the rebellion that was a subject much debated between the tories and the whigs in England. At the time of the Declaration of Independence the Indians had been made very little use of compared with what was done with them afterwards in the massacres of Wyoming and the Cherry Valley. To employ an inferior race to help put down a rebellion for independence of a superior and more scrupulous race is always more or less shocking to people of liberal politics. There were protests against our use of the Macabees to put down the rebellion of the Filipinos. But the Macabees

like the Indians, were very useful and efficient and the same argument could be made that was made in England, that war is, in any event, destruction and can be made as merciless with the musket of the soldier as with the tomahawk and scalping knife of the savage.

"Since force is become necessary," said Lind, "to support the authority of parliament, that force which is most easily to be procured and most likely to be effective, is the force which ought to be employed. I should be bold enough to avow, that to me it would make little difference, whether the instrument be a German or a Calmack, a Russian or a Mohawk."

He also argues that, as the Americans themselves had already tried to outbid the British in securing the alliance of the Indian tribes, they had no moral ground to object to the employment of the Indians by the British. On our side Washington, John Adams, and Schuyler, favored employing the Indians, if their services could be obtained; and a committee of the Congress reported in favor of using them as auxiliaries to the continental army. The main argument used was their utility and the obvious advantage of preventing their use by the British. Some of the Stockbridge Indians enlisted as Massachusetts militia; and the provincial congress of Massachusetts made efforts to draw the Mohawks into an alliance, "to whet their hatches and be prepared with us to defend our liberties and lives." But the services of the Indians, so far as they took an actual part in the contest, were usually secured by the British, and loyalists, and apparently for the reason that the Indians believed that England would prevail in the end.*

28. “In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.”

Two petitions had been sent by the Congress to the King, and he had paid no attention to either of them because they asked that the colonies should be set free from the jurisdiction of Parliament, or more accurately, perhaps, because they asserted that the colonies were already free from that jurisdiction and asked the King to uphold them in this assertion. Besides the accusation of tyranny in the 28th charge, there was a paragraph in the beginning of the Declaration accusing the king and his government of a design to reduce the colonies “under absolute despotism” and establish “an absolute tyranny over these states.” Englishmen protested against this as an exaggeration and altogether too violent language for a public document; and John Adams who was on the committee that drafted the Declaration was inclined to think these passages too highly colored and passionate.

“There were other expressions which I would not have inserted if I had drawn it up,—particularly that which called the king a tyrant. I thought this too personal; for I never believed George to be a tyrant in disposition and nature. I always believed him to be deceived by his courtiers on both sides of the Atlantic, and, in his official capacity only, cruel. I thought the expression too passionate and too much like scolding, for so grave and solemn a document; but, as Franklin and Sherman were to inspect it afterwards, I thought it would not become me to strike it out. I consented to report it.”

(John Adams Works Vol. II, 514 &c.)

Modern English critics have in like manner protested against this arraignment of George III. “as a single and despotic tyrant.” England, they say had no intention of establishing the rule of the Turk or of the Russian, which is what the words absolute despotism and absolute tyranny
imply. She intended merely to bring the American communities into a more colonial condition and make of them happy and prosperous commonwealths like Australia and Canada.* To which the Adamses and Jeffersons would reply that they did not want to be in more of a colonial condition or in any sort of colonial condition. Conditions of that sort were under the best circumstances mere political degradation, no matter how much prosperity accompanied them. They preferred to starve in independence or die in the attempt to attain it.

It may now be well to summarize the instances that have been brought to light under the twenty-eight charges and view in brief the case made out against the king. The declaration lays no particular stress on any one of the charges; but looking backward at the whole history of the subject the two charges under which can be found the strongest instances, as they now seem, for breaking off the allegiance or contract with the King, are the 17th “For imposing taxes on us without our consent” and the 22d “For suspending our own legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever.”

Under the first are the instances of the stamp tax, the paint, paper and glass tax, and the tea tax, about which there had been such tremendous controversy during the last twelve years. These taxes had all been repented of and repealed except the tea tax, which still stood. But repentance in the opinion of the patriots amounted to nothing, because Parliament had passed the Declaratory act as it was called, which announced as an unalterable principle of the British Constitution, that no matter what taxes might be repented of or considered bad policy for the moment and repealed, Parliament retained and always would retain the right, not only to tax the colonies, but to legislate for them “in all cases whatsoever.” In proof of this Parliament had suspended the power of the legislature of New York, had

* Goldwin Smith, History of the United States.
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shown that it was omnipotent and supreme throughout the whole British empire, and that a colony and a colony legislature were mere dependencies which might have considerable privileges and indulgencies, but no positive and fixed rights as against Parliament.

It was against this great principle of Parliamentary omnipotence over the whole British empire that our ancestors rebelled; and they decided to cast off their allegiance to the King because he approved of this principle, and was sending fleets and armies to America to enforce it. All the other political offences of the King were mere trifles compared to this one, and in a sense may be said to have been put into the Declaration as mere make-weight. They might, perhaps, never have been heard of and the American communities might have remained for some years nominally within a sort of British empire, if Parliament had announced that it had no jurisdiction whatsoever in the colonies. But that was not the sort of colonial empire England wanted and it could hardly be called an empire in the usual meaning of the word.

In the matter of disallowance of colonial laws the king had vetoed acts creating paper money, acts granting divorces, acts taxing the slave trade, and acts checking the sending of convicts to America.

In instructions to governors to veto all legislative acts of imperial importance unless they contained a clause suspending their operation until the King’s pleasure was known, I have found only two instances. The governors were instructed not to assent to any act establishing a lottery unless it contained the suspending clause; and the governor of North Carolina vetoed the judiciary act of 1773, because it had no suspending clause. The act was afterwards passed with the suspending clause, and the crown took no action on it. I am inclined to think there were other instances which in time, may be found.

In the disallowance of acts creating new counties because representation in the legislature was given the new coun-
ties, and thus the strength of the patriot party increased, there were instances in New Hampshire, Massachusetts, New York, New Jersey and Virginia.

In the matter of calling legislatures to meet at a place other than their usual place of meeting there were instances in Massachusetts and South Carolina. In dissolving legislatures for opposing crown measures and refusing for some time to reassemble them, there were instances in Virginia, Massachusetts, and South Carolina. In the matter of naturalization, the crown had in 1773, instructed all governors to veto any naturalization act that should be passed by a colonial legislature. How many acts of this sort were vetoed has not yet been ascertained; but for the purposes of the Declaration the King’s offense consisted in his instruction to all the governors to veto such acts. He had also to prevent the growth of the popular or patriot party, raised the price of wild land.

In discouraging migration which might also increase the patriot party only one instance is as yet known and that was the disallowance of a North Carolina act exempting immigrants from all taxation for four years. In obstructing the administration of justice by refusing his assent to laws establishing judiciary powers only one instance is known and that was in North Carolina. As to making colonial judges dependent on his will for the tenure of their offices, there was no question about that, for it had always been Great Britain’s policy; and in attempting to deprive the colonial legislatures of the privilege and advantage of paying the salaries of the judges and securing that advantage for the crown, there was a notorious instance in Massachusetts. In erecting a “multitude of new offices and sending hither swarms of officers” he had taken part in creating four new admiralty courts and five new commissioners of customs with some forty or fifty clerks, and assistants.

As to keeping standing armies in the colonies in times of peace without the consent of the colonial legislatures
that had always been the British practice. As to rendering "the military independent of and superior to the civil power," there was a notorious instance in Massachusetts when General Gage was made governor and commander-in-chief for the purpose of suppressing what in England, was considered rebellion.

As to combining with Parliament to subject the colonists to that body's jurisdiction, some of the instances have already been mentioned; and there were the other instances of quartering troops in the colonies, having soldiers tried in England when accused of murdering colonists, the Fisheries act which was intended to check the rising rebellion by prohibiting the colonists from trading with or obtaining supplies from any foreign nation, the acts creating admiralty courts which tried without juries, the old act of Henry VIII. allowing colonists to be taken to England to be tried for treason, the Quebec act extending the boundaries of Canada to the Ohio, and establishing by law the Roman Catholic religion, and the act altering the charter of Massachusetts without its consent.

In waging war upon the colonies and thereby putting them out of his protection and allegiance the instances were, of course, innumerable, because several battles had been fought and two or three towns shelled and burnt. In the matter of compelling American sailors captured on the high seas to serve in British war ships the fact has never been questioned or denied. In the matter of exciting insurrections among the slaves there was a notorious instance by Lord Dunmore in Virginia and several attempts had been made to organize the Indians against the colonists. In the matter of rejection of petitions, two petitions one in 1774, the other in 1775, had been sent by the Congress to the King and both of them rejected.

Such were the instances; certainly numerous enough; and as to the weight to be given to each the previous discussion has, it is hoped, enabled the reader to judge for himself.