

instructions. The king had, however, subsequently levied a duty, which he was precluded from doing by the very constitution which he had given. The duty was paid in the first instance, but was afterwards recovered, owing to the decision of lord Mansfield." In order to ascertain therefore how the charter, under which they sat as a house, was affected by this measure, he moved a resolution the principal object of which was to obtain from the lieutenant governor, such extracts from His Majesty's commission and instructions to the governor-general, as regard the calling of the general assemblies, and the oath and declaration members are required to take.

In the course of Mr. Archibald's reply to Mr. Ritchie, he advanced that, "in whatever manner a colony is acquired by the mother-country; whether by peopling or conquest, the constitution which it subsequently obtains, must be from the crown; and whenever subjects come to reside in such colonies, they bring with them the rights that are common to Englishmen; but the penal statutes of the mother-country, do not extend, unless they are amendments of the common law. Then, where is the mighty story of the constitution? The King directs his representative to call an assembly of merchants and planters, for such are the words of the commission, and when an assembly is once called, he can not interfere in taxing the colony. The case that had been cited, therefore, had no bearing upon that under consideration. The instructions which His Majesty had from time to time issued, had declared what oaths should be taken, and what description of persons might be permitted to hold seats in that house; and the power which made those regulations might relax them, and from time to time they had been so relaxed." And upon the whole this gentleman seemed to conceive that the right was solely in the crown, and the house had no business to interfere.

Mr. Marshall observed that "much had been said relative to the constitution, as if the province did not possess one. It is true that it was not framed by an act of parliament, in which their powers were limited and defined, but they had what was equal—the governor's commission and the instructions that accompany it, under the authority of which the assembly has been convened ever since it first met; and those instructions had for a long time been so fully executed that any deviation could only be considered as an infringement. If such was the fact, the proposed measure must have that effect; and if the King could dispense with any part of the constitution he could dispense with the whole, and might refuse to call an assembly. The object in giving a commission was to shew persons, who came to settle in the province what they were to expect; but if every thing is left uncertain, then no security is afforded. Therefore the constitution or charter of the country ought not to be altered.