

back in the history of the province and in English institutions. Thirty years earlier writs of error had been issued for review by the governor and council of judgments of the central provincial court, and many instances of these writs are found in records of succeeding years.¹ The governor and council constituted the upper house of the provincial assembly, and the jurisdiction invoked was that of the upper house and was commonly referred to as the jurisdiction of the assembly, or of parliament in error, the jurisdiction exercised in England by the House of Lords as an upper house. Apparently it was conceived in the province that a legislative assembly, wherever set up, included among its normal functions that of reviewing judgments of courts of justice, and that the function was regularly exercised by an upper house.²

The earliest records of the issuance of the writs contain no reference to source or prototype of the jurisdiction, and speculation being free, it is perhaps necessary to admit a possibility that the development of this court in Maryland may have been influenced by the jurisdiction exercised by the bishop and his council in the palatinate of Durham, for the charter referred to the government in the palatinate as a model, and some consciousness of the institutions of the palatinate was thus made likely at the time of the early writs. The province had originated in a grant prepared for George Calvert, a member of a Yorkshire family, who was one of the principal secretaries of James I and a counsellor of Charles I, and completed for his son and heir, Caecilius, bestowing on him and his successors as lords of the new domain the broad powers that the bishop had, or ever had had; and in the seventeenth century a writ of error lay for review by the bishop of judgments in his chancery or before his justices, and his council sat with him to form the court for this purpose.³ A writ of error lay to that tribunal, returnable to the king's bench. In 1715 the proprietary government of Maryland was quietly restored, without disturbance of the career of the court, and attorneys are found insisting after that year that appeals no longer lay from a decision of the governor and council to the King in Council, as under the royal government, but lay now, under the restored charter, only to the proprietary, or "prince of the palatinate," subject to further appeal to the king's bench.⁴ But the practice did not take that course. Until the end of the proprietary government with the opening of the American Revolution, appeals were prosecuted to the King in Council, and the final jurisdiction in Maryland continued to be regarded as the equivalent of that vested in the House of Lords,⁵ but subject to the review by the King in

¹ *Archives*, XLIX, 122; *ibid.*, I, 521.

² *Ibid.*, V, 128, 264; *ibid.*, I, 388. The jurisdiction was sometimes attributed in the province to the Stat. 27 Eliz. ch. 8. Holdsworth, *History of English Law* (1922), I, 244, 370.

³ G. T. Lapsley, *The County Palatine of Durham* (Cambridge, 1924), 75, 180 *et seq.*, 212 *et seq.*; Holdsworth, *op. cit.*, I, 111 *et seq.*

⁴ John V. L. McMahon, *An Historical View of the Government of Maryland* (Baltimore, 1831), 271 *et seq.* See especially *post*, pp. 355, 425, and 445.

⁵ The style adopted for the court about 1720, and the customary form of writ of error