2. The constitution will provide that these courts will have only the jurisdiction that will be stated in law.

3. The constitution will incorporate a general provision carrying forward the common law of England as of the time of the independence of the colony.

Question: *Under the above circumstances, must the constitution expressly declare that these courts have the power to issue original writs in aid of their jurisdiction? In other words, is the power of a court, whose jurisdiction is appellate by law, vested with the inherent power to issue original writs in aid of that jurisdiction?*

Discussion:

Case law indicates a differing view as to whether the writ of error is an available remedy even in the absence of a statutory or constitutional provision therefor. It is clear that the power to issue a writ of error (considered an original writ) may be controlled by statute; that such power is no longer available where abolished by statute, either expressly or by implication; and that the statutory remedies in nature of appeals have considerably limited the use of the writ.[2]

Some courts have held that in the absence of statutory or constitutional power to issue writs of error, due process does not require such issuance[3] and there is no inherent right of review.[4] At least one court seemed to dictate the necessity of constitutional authority.[5]

Most courts, on the other hand, hold that there can be no denial of the right of appellate review, even in the absence of constitutional or statutory authority to issue original writs.[6] One case treated the absence of a statutory provision authorizing original writs as automatically requiring issuance of a writ of error.[7]

Maryland seems to waver from one view to another. One of this State's earliest cases on the issue held that the right to an appeal or a writ of error could not be refused, however indifferent or baseless the demand on the merits may have been.[8] The most recent case decided that, unless it is specifically provided for by statute, an appeal will not lie from a judgment rendered by a lower court to a court of special or limited jurisdiction.[9] A number of other cases indicate variations of the rule.[10]

Silence on the question of issuance of writs implies authority to do so largely because the authority exists in common law. Consideration of reception statutes for the common law, and their background, is important.

Included in the common law of England, which was received into Maryland's Constitution, were the fundamental courts *by* the common law, *i.e.*, courts and their powers which had

[2] For case references *see* 4 C.J.S. *Appeal & Error* § 10 (1957).

[3] Patterick v. Carbon, 106 Utah 55, 145, P. 2d 503 (1944).

[4] Binkley v. Asire, 335 Mich. 89, 55 N.W. 2d 742 (1952); *In re* Brewer, 250 Mich. 450, 231 N.W. 89 (1930).

[5] State v. Harrington, 3 Terry 14, 27 A. 2d 67 (Del. 1942).

[6] From v. Sutton, 156 Neb. 411, 56 N.W. 2d 441 (1953); Edwards Feed Mill v. Johnson, 302 S.W.2d 151 (Tex. Civ. App. 1957).

[7] Ekendahl v. Svolos, 388 Ill. 412, 58 N.E. 2d 585 (1944).

[8] Thompson v. McKim, 6 Har. & J. 302 (1825).

[9] Hart v. Comm'r of Motor Vehicles, 226 Md. 584, 174 A. 2d 725 (1961).

[10] *See, e.g.*, Barth v. Rosenfeld, 36 Md. 604 (1872); Brooks v. Sprague, 157 Md. 160, 145 A. 375 (1929); Travers v. Dean, 98 Md. 72, 56 A. 388 (1903); Johnson v. Bd. of Zoning Appeals, 196 Md. 400, 76 A. 2d 736 (1950).