existed from time immemorial and which, according to the colonists, needed no royal or parliamentary act to bring them into existence. These courts were deemed fundamental parts of the common law system because they were the source of the common law. For the colonies they were the functional equivalents of the King's Bench or the Common Bench, Exchequer, etc., and the extent of their power was deemed to be practically co-extensive with the powers of their English counterparts. Courts of last resort were considered, then, as integral parts of the common law. When state constitutions were first being written, the above theory was in mind, and where the common law was most completely absorbed in the constitution and in practice, judges were able and correct in continuing to act as they had always acted. One state, New York, omitted completely a provision setting up the judiciary, regarding the court as an existing part of the common law of England received into the constitution of the new state. Thus, the new judges continued to issue writs in aid of their jurisdiction freely, as their colonial and English predecessors had done. Only the source of authority for the writ changed, the people being substituted for the king.

RECOMMENDATIONS

If it is desirable that courts be vested with the power to issue original writs in aid of their appellate jurisdiction, such authority should, to avoid differing interpretations, be expressly stated. This is especially necessary where a deletion of the common-law reception statute (the common law being the present source, by implication, of the power to issue original writs) is contemplated.