

cases other than those removed from the provincial court and chancery. Jurisdiction over probate and administration of estates was managed by the provincial court or a justice specially selected, until 1673, when the English organization, with a prerogative court and a commissary general, was reproduced; and for review of any case decided by the commissary, a court called a court of delegates was specially commissioned here,¹ as in England. A court of admiralty was instituted by a special commission in 1684,² but it was not a permanent separate institution, for admiralty causes appear to have been heard by the provincial court, or by special courts of oyer and terminer,³ through the succeeding years until 1696, when a permanent vice-admiralty court was established.⁴

6. BEGINNINGS OF THE JURISDICTION IN ERROR AND ON APPEALS

It was in 1649 or 1650 that the governor and council definitely assumed the position of an upper house of the assembly, and the records show that not many years passed before this drew upon them the judicial functions that since the thirteenth century, or shortly after, had belonged to the upper parliamentary chamber in England.⁵ The earliest record of a writ of error for review by them is one of 1663;⁶ the issue of the next was recorded in 1664;⁷ and after that time the number increased with some rapidity.⁸ Only a small number are mentioned in the published records of the provincial court and of the governor and council, but a record of proceedings in both the provincial and chancery courts soon to be published as one of the *Archives*,⁹ contains entries of many. It seems likely that the attaching of the jurisdiction was a consequence not foreseen when the governor and council took their position as the upper house, for they themselves sat as the justices of the provincial court, the judgments of which would be reviewed. The same body of men would, and they did, render judgments and review them — an incongruity which caused a protest and a change late in the century. Curiously, there were reversals of the judgments in a number of cases.¹⁰

¹ *Archives*, XX, 312; 1 Harris & McHenry, 512; Edith E. MacQueen, "The Commissary in Colonial Maryland," *Maryland Hist. Mag.*, XXV, 190.

² *Archives*, XVII, 360.

³ *Ibid.*, VIII, 9, 445, 447, 489, 490, 491; XIII, 334, 337, 360.

⁴ *Ibid.*, XX, 478.

⁵ Holdsworth, *op. cit.*, I, 370.

⁶ *Archives*, XLIX, 122.

⁷ *Ibid.*, p. 239.

⁸ *Ibid.*, II, 12, 269, 380, 502.

⁹ As vol. LI.

¹⁰ *Archives*, II, 33, 59, 380. Compare remark of the chancellor, *post*, p. 589, that he would not call himself fool by reversing his own decrees.