or "assignments of error," would be used for both. These two proceedings in common-law cases, notwithstanding the slight, almost entirely nominal distinction thus left between them, were continued in Maryland until the nineteenth century, when the writ of error fell into comparative disuse. The appeal in chancery cases, allowed early in the eighteenth century, presents a substantial distinction in its affording a review of facts as well as of rulings of law.

What should be the scope of review by a higher court in the province was still a subject of discussion near the end of the seventeenth century. The assembly's enactment of 1678 had not been found by the judges to be a satisfactory settlement of the problem. In 1681,[1] the governor and council, as the upper house, said in a message to the lower house:

> The Upper House being all of them Judges of the Provincial Court and having had a three years Experience of the Law entitled an Act for Appeals and Regulating Writts of Error do find that if every Appealant from the County Courts shall be in no better Condition than the Person that Purchaseth a Writt of Error the County Courts will prove the greatest Grievance in the Province, Since the unskilfulness of the Attorneys Admitted Commonly in the County Courts is Such that upon Errors Assigned the Judgment will undoubtedly be reversed but in case of Appeals the Merit of the Cause be by a New Declaration, Plea, issue, and Tryall, by Evidence at Barr brought before the Provincial Court, We doubt not but to bring things to that Pass that Writts of Error shall not be so common nor Vexatious as heretofore, being resolved to Settle Such Rules for the Provincial Court as shall hinder Writts of Error for the future in Assemblies, and therefore desire the Lower House to take that Act into Consideration and Amend it in case of Appeals.

Their objection was similar to one made by Charles Carroll, a lawyer of evident ability, in 1696:

> And I am further of Opinion (though it be somewhat beside the Quaere) that in this Countrey there ought to be a greater latitude allowed in assigning of Errors, and the merits of the Cause to be more inquired into by the Judges before whom an Appeal or Writt of Error is brought, than in England; Because some of our Judges and some of our Juryes (which for want of knowing, and more consciencious Men must of necessity be made use of) do oftentimes Judge according to the Affection or disaffection they have for the person plaintiffe or Defendant, and not according to the Merit of the Cause or the Law that Arises vpon the pleadings thereof; This I should not have the confidence to Averr, had I not been an Eye Witness and a hearer of Matters which make it evident.[2]

But in 1681 no amendment was made, and the upper house passed an order to stop the bringing of any new cases on writs of error before that body.[3]

[1] *Archives*, VII, 222, 224.
[2] *Ibid.*, XX, 439; *post*, Appendix, p. 648.
[3] *Ibid.*, VII, 224, 297, 361.