And now it seems clear that the practice of trying criminal cases without juries has been continuous from near the founding of the province. A provincial statute passed in 1638 allowed trial by jury, "by twelve freemen at the least," only in cases of crimes affecting life or member;[37] and in 1642, the right was extended to all cases, civil or criminal, upon the condition that if only one party desired the jury he should give security to pay the cost of it, except in criminal cases affecting life or member.[38] Trials of criminal cases without juries were, therefore, held in the Provincial Court,[39] the county court records of the seventeenth and eighteenth centuries show a common practice of trying minor charges without juries, and the modern practice of non-jury criminal trials in Maryland is clearly traceable to this eighteenth century practice; and as there were no further statutes on the subject passed in the seventeenth century, it seems reasonably certain that the present practice originated as early as 1638. Mereness[40] describes the practice in all trial courts during the provincial period as it was defined in the statutes of 1638 and 1642.

A third innovation on English procedure, more to the point here, was in an early practice, sanctioned by statute in Maryland in 1678,[41] of effecting appeals in cases at law by informal prayer and order, and then merely filing transcripts of

37. Archives, Proc. Assembly, 1637-1664, 83.
38. Act 1642, c. 4. Archives, Proc. Assembly, 1637-1664, 151
39. Archives, Provincial Court, 1637 to 1650, Court and Testamentary Business, 165.
40. Page 246.
41. Chapter 8, Archives, Proc. Assembly, 1678 to 1683, 71.