the records of trial with assignments of error, or "reasons", without any formal writ of error to begin with. The older practice was in pursuance of the original theory that the reviewing tribunal had no power to take action upon errors below unless and until it should be commissioned to do so by a writ in each case,[42] and when the review came in time to be a matter of course, the special commission or writ had no logical place; but its career was not ended yet, even in Maryland where it was so early made optional. As will be seen, the right to adopt this simpler method was later extended to higher appeals, those from the Provincial Court to the Governor and Council, and the statutory provision of 1678, repeated in continuing acts, was the origin of the practice now prevailing in Maryland. The practice did not altogether prevail, however, until the nineteenth century; lawyers for a long time clung to the old ways. From the beginning, in 1678, the proceeding by the new method was called an "appeal", as distinguished from the proceeding on writ of error.

The law applied in the seventeenth century courts was fundamentally, of course, the law of England; but it was the law of England with a difference. There was some special adaptation, and throughout the provincial period there was uncertainty and contention on the application of English statutes.[43] An instance of the difficulties to be dealt with is afforded by the report of a case

42. Holdsworth, I, 370, 371.

43. Reinsch, The English Common Law in Early American Colonies, Select Essays on Anglo-American Legal History, I, 400. Sioussat, The Theory of the Extension of English Statutes in the Plantations, Ibid, 416. Mereness, 261. Chalmers, Political Annals, 677.