

dence; it seems unlikely that requests were made to the court to charge in any particular form. After the closings, if any, the court presumably charged the jury. The jury then deliberated on its verdict, either at the bar or upon withdrawing in the attendance of an officer of the court such as the crier. Having concluded its deliberations, the jury, perhaps having been called over by name, would return a verdict by its foreman that it found the defendant (who had been called to the bar) guilty or not guilty of the offense charged in the presentment, as the case might be. This was usually entered in the *Liber* in formulary language but it is unlikely that, consistent with English practice in felony cases, the verdict delivered contained any statement as to flight, in the case of an acquittal, or as to goods and chattels, in case of conviction. In one assault case the verdict was entered as if in a civil action, *viz.*: "We fine for the Plantiffe, and doe fine him for the Same in the Sume of five Shillings Sterling money of England."³³ While a special verdict was permitted in a criminal case by the English authorities, none is found in the *Liber*.

Sentences

If a verdict of not guilty was returned, the court would adjudge that defendant go without day except that defendant would have to remain in custody of the sheriff until the required fees were paid. (In a hog-stealing case defendant, although acquitted, was bound for his good behavior until the next court.) If a verdict of guilty was returned, the court proceeded to sentence apparently without motion for judgment by the clerk of the indictments. The later entries use a close approximation of the conventional English formula for sentence, *viz.*: "all and singular the premises by the Court being seen and understood it is considered." Earlier sentences usually included the indispensable "it is considered" phrase. As already indicated, a fine might be imposed upon defendant or he might be ordered whipped by the sheriff or put in the pillory or stocks. (To the extent offenders can be identified, punishments imposed are consistent with a premise of law enforcement in the proprietary period that whipping as a punishment was confined to the servant classes.³⁴) As part of the sentence he might be ordered into the custody of the sheriff until he gave sufficient security for his appearance at the next court and for his good behavior in the meantime (perhaps especially as to a complaining witness). A number of sentences provided that defendant remain in the custody of the sheriff until all fees were paid or perhaps until sufficient security was given for the payment of such fees. In most cases in which defendants were bound by recognizance to appear at the next court, entries in the *Liber* indicate that they appeared in accordance with the terms of the recognizance and were then cleared or discharged by proclamation.

Practice in other county courts reveals the use of motions in arrest of judgment in criminal causes; none appears in the *Liber*. That criminal procedure did not adhere closely to English standards appears from a 1707 declaration in the Assembly records that the practice of the courts was to be as constant as might be to that of the Kingdom of England "except Arguing of exceptions to indictments and moving in arrest of judgment thereon."³⁵ In the event a fine imposed was not paid within a year and a day it would be necessary to proceed by *scire facias*.

As to payment of fees, a 1692 act specifically provided that any criminal committed to the charge of the sheriff or goaler, being discharged by order and due

33. *Infra* 394.

34. See Semmes, *Crime and Punishment in Early Maryland* 39 (1938); Merritt, Introduction to *Proceedings of the Provincial Court of Maryland, 1670/1-1675*, 65 *MA* xxiii.

35. 27 *id.* 14. For use of an *allocutus* see *infra* 169.