

course of law, should pay his own fees to the sheriff or goaler, as set by act of Assembly, either out of his estate or by servitude or otherwise. A 1699 act extended these provisions to the offices of clerk and cryer, although it seems likely that a defendant in a criminal proceeding was already liable for payment of fees of the clerk and cryer by earlier enactment.³⁶ The fees paid by a defendant might amount to a sizable sum. The sheriff was entitled to 35 pounds of tobacco for serving any writ or warrant; 20 pounds per day for attending upon any prisoner in custody more than 24 hours; and 120 pounds for impaneling a jury. A cryer in a county court was entitled to 72 pounds of tobacco for swearing a jury; 6 pounds for swearing each witness; 72 for every good behavior ordered in court; and 40 pounds for clearing every prisoner by order of court and proclamation. The clerk received fees for such items as for a *venire facias* (12 pounds), for entering defendant's appearance (6 pounds), for filing every plea (4 pounds), for a subpoena (10 or 16 pounds, depending on the number of names), for making the issue if joined (8 pounds), for entering the panel (4 pounds), for every oath (6 pounds) and for entering judgment (16 pounds). The clerk of the indictments received 200 pounds in most cases in which the accused put himself upon a jury.³⁷

As to execution of afflictive sanctions it appears that normally the defendant was in the custody of the sheriff and an open pronouncement of sentence or judgment was the only necessary direction for execution. No indication of the use of a writ or warrant appears in the *Liber* or in the several schedules of fees of officers of the court. In the cases of fines it was not customary for the court to order the defendant to stand committed until the fine was paid. The fines being small in amount were probably paid immediately; however, there are no notations that fines were paid in court and that defendants were discharged, unless marginal notations "Fined" have such meaning. Of course, as noted above, in many cases defendants were committed to the custody of the sheriff until security was given for good behavior and appearance at the next court or until all officers' fees were paid. In one case the entry stated that defendant was to give sufficient caution to the sheriff to pay a fine. In contrast, in the one instance in which an information was employed, noted above, the court ordered that defendant, found guilty and fined 400 pounds of tobacco or twenty shillings, remain in the custody of the sheriff until he gave good security to pay the fine and all officers' fees.³⁸

Scattered through the *Liber* are various cases in which the justices administered the law without any presentment or trial by a petty jury. A number of these, as already noted, came within the area of contempt of court. In several cases, as we have seen, offenders complained against were ordered to enter into recognizances for their good behavior and appearance at the next court, but were never presented or tried.³⁹

Transfer and Review

Little provision was made for the transfer of causes from the county courts to the Provincial Court. As noted earlier, the several commissions provided that the justices were not to proceed to take life or members but in every such case to send the prisoners "with their Indictments and the whole matter depending" to the

36. 13 MA 550; 22 *id.* 527.

37. 13 *id.* 506, 512; 22 *id.* 570 (containing a separate list of fees to the clerk of the county court "For Criminalls," p. 579); 38 *id.* 113; 22 *id.* 502 (excluded were prosecutions under 13 *id.* 479 and 22 *id.* 553).

38. *Supra* p. lvi. As to offenses within view of the justices see *infra* 60.

39. *Supra* pp. li–lii, liv, lvii.