THE FOUNDATIONS OF LAW IN MARYLAND: 1634-1715

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LEGAL historians have made little effort to identify and evaluate the various elements that constituted the foundation for law and authority in colonial Maryland prior to the resumption of proprietary rule in 1715. The records contain references to the "constitution," the "laws and constitution," "the laws and usages," the "fundamental and known laws," "the laws and precedents" of the Province, the "laws of the country" and the "common law of the province," but contemporary exposition of these terms is not to be found. In recent years, writers have tended to concentrate on specific elements such as the provisions of the 1632 charter, the extension of various acts of Parliament to the Province, the putative manorial court system, or certain aspects of law enforcement. The purpose of this essay is to present some general conclusions as to law and authority in a period comprising proprietary rule (1634-1689) and royal government (1692-1715), based primarily upon study of the records of the Assembly, the Council, the Court of Appeals, the Provincial Court, the Court of Chancery and certain county courts.[1]

There were nine important elements of law and authority during the years 1634 to 1715.[2] For the proprietary period, the basic source was, of course, the royal charter, as implemented by proprietary commissions, instructions and "conditions of plantation." The comparable instrument for the period of royal government was the governor's commission, as supplemented by royal instructions, and less frequently, by Orders in Council, directions from the Board of Trade, and commissions or instructions from such participants in imperial administration as the High Court of Admiralty and the Commissioners of the Customs. A second consisted of the numerous acts, both public and private, of the provincial Assembly, plus occasional ordinances and resolutions (the latter being used at times to provide interpretations of earlier acts).

A third was made up of the various acts of Parliament, both pre-settlement and post-settlement, that were regarded as extending to the Province. The fourth consisted of the common law of England (including equity, local custom, and the law merchant) to the extent it was received in the colony. The fifth was local custom and usage, including the bylaws of towns or cities and manorial customs and usages. The sixth was composed of judicial commissions and instructions and commissions to administrative officers such as sheriffs, coroners, and constables. The seventh comprehended judicial practice in procedural matters, including the rules of court promulgated at various times. The eighth may be characterized as the decisional law of the various courts of the Province. The ninth took the form of proclamations and conciliar orders issued by the executive authority, or in a few instances, royal proclamations extended to the Province. Sources of private law such as contracts, leases, writings obligatory, bills of exchange, conveyances, wills, and trusts are considered as being beyond the scope of the present essay.

The 1632 charter from Charles I to Cecilius Calvert, the first proprietor of the Province, in many respects provided the broadest foundation for law and authority in Maryland.[3] Numerous acts of the Assembly stemmed from its grant of power to enact laws with the advice and assent of the freemen or their delegates. Exercise of this power was subject to the usual proviso that the laws should be consonant to reason and not repugnant or contrary but, so far as conveniently might be, agreeable to the laws, statutes, customs, and rights of the kingdom of England. Although the liberal charter failed to provide for any legislative review by the King in Council, the records disclose no case in which this omission ever became significant.[4] The power to make ordinances for the conservation of the peace and better government of the Province, subject to certain restrictions, was seldom resorted to, except to the extent that it served as the basis for proclamations and conciliar orders.

The charter also conferred broad powers on the proprietor to administer justice and to establish a system of courts with both civil and criminal jurisdiction. While some obscurity surrounds

the establishment of the Provincial Court and the earliest county courts, they and the Court of Chancery and the Prerogative Court undoubtedly owed their origin and continued existence to this power. The same may be said of the issuance of process in the name of the proprietor.

As to a land system, the charter in effect provided for tenure by free and common socage, estates and interests in land as in England, and subinfeudation free from the restrictions of *Quia Emptores* (18 Edward I, c.1).[5] In practice, however, the proprietary land-grant policy was characterized by a resort to quit rents, fines on alienation, and broad claims to escheat.[6]

License to erect manors with courts baron and courts leet resulted in the granting of a number of manors but there was no extensive introduction of a system of manorial courts.[7] The power to incorporate boroughs and cities took on significance only in the case of the several charters to the city of St. Mary's.[8] The somewhat enigmatic provision that the settlers and their descent should be regarded as English subjects and have all the privileges, franchises, and liberties of the kingdom of England in the same manner as subjects within the kingdom became a rallying point in the struggle of the inhabitants against proprietary pretensions. However, upon some occasions the settlers relied upon an inherent right or birthright theory, or upon the extension of the provisions of Magna Carta to the Province by an act of Assembly.[9] The well-known clause granting rights comparable to those possessed by the Bishop of Durham in the County Palatine of Durham, prior to the parliamentary abridgment of 1536, may have authorized the appointment of a council and the establishment of counties, as well as vesting in the proprietary as *jura regalia* the right to waifs, estrays, wreck and treasure trove.[10] As far as the power to tax was concerned, the proprietary collector was to be "wholly guided by the Rules and Directions of our Royall Charter and the known Laws of our Kingdom of England."[11]

During the period of royal government the charter was in effect suspended, although rights to the soil and to certain revenues remained in the proprietor, and the governor's commission became the "constitution" of the Province. Introduction of royal

government brought with it some institutional changes — in its law-making, the Assembly, although more active and independent, was now subject to the royal prerogative and, after 1696, to effective legislative review by the King in Council. The Anglican Church became the established church of the colony and a moral element was introduced into law enforcement. A Court of Appeals was instituted and appeals to the Privy Council provided for. The governor became head of the Court of Chancery and the administration of justice in other courts was centralized to some extent and tightened up. New admiralty courts were established. Certain controls were asserted over the legal profession and Council members became less identified with the administration of justice.

Yet in many respects, the institutions spawned under proprietary rule remained untouched during the period of royal rule. Much of the legislation followed closely the pattern of laws passed in the proprietary period. Although process now issued in the King's name, the practices of the courts showed no cleavage with the past. The county and the hundred remained the significant administrative units with many matters handled by the commissioners and by the sheriff, coroner, and constable as in the past. Nor did the corpus of law administered by the courts change to any significant degree.[12]

While the acts of the Assembly constituted one of the principal elements of law and authority in early Maryland, no comprehensive system of local legislation existed before the first years of the Restoration. Maryland's early legislative history was characterized by a constitutional tug of war between the proprietor and the House of Delegates as to the locus of the power to initiate legislation. Moreover, there was a lack of legislative continuity as events in England or in neighboring Virginia brought about changes in Maryland's government. No collected laws appeared in print until 1700.[13] Throughout most of the period, lawyers and litigants alike were beset by the uncertainty inherent in a system of temporary laws, with numerous acts reviving or repealing legislation. The passage of successive laws on the same subject, with little or no change in substance, result[illegible] a

staggering volume of legislation — almost 1,000 public acts for the period 1638-1715, in addition to nearly 150 private or petitionary acts. Less than one-half the public acts and about one-fifth of the private acts were enacted in the proprietary period.

Much of the legislation concerned itself with subjects peculiar to the circumstances of the colony and afforded little room for resort to the laws and customs of England. Some of the laws in this category were acts raising and disbursing revenues, fixing or regulating the fees of public officers, maintaining the militia, governing Indian relations, defining proprietary rights, and encouraging and regulating the growth and sale of tobacco — the crop upon which the economy of the Province was based. Others were concerned with providing economic regulation of various sorts, regulating the conduct of servants and slaves, regulating the keeping of domestic and control of wild animals, establishing new counties, ports and towns, and the keeping of various records. Laws were also passed regulating the fencing of cultivated lands, providing for the establishment and maintenance of highways and bridges, regulating ordinaries, and encouraging trade and agriculture other than tobacco-raising. Legislation also regulated the use of commodities as currency; tobacco being the common medium of exchange, little use was made of sterling. Finally, acts were passed encouraging the building of watermills, regulating departures from the Province, authorizing the purchase of lands and erection of buildings for public use, and ascertaining the bounds of counties and, as a royal province, of parishes.[14]

A number of these statutes contemplated enforcement by so-called popular actions (*qui tam* actions) in the Provincial Court or the county courts for breach of a penal statute. A few were remedial statutes providing for "actions upon a statute" in which the right to sue was limited to the aggrieved or injured party or parties.[15] Despite the fact that the popular action was frequently provided as a means of law enforcement in Maryland, relatively few such actions appear in the court records examined and the abuses incident to its use in England were avoided in the Province.[16] The extent to which draftsmen may have been influenced by English

legislative models or by the lack of a strong system of proprietary public prosecutors is not apparent.

Apart from a few early statutes, the Assembly made little attempt to deal with serious criminal offenses or to regulate procedure in criminal matters.[17] Generally speaking, the colony relied upon the laws of England in such matters. However, provincial laws, at various times, did provide punishment for such offenses as drunkenness, profane cursing and swearing, hog-stealing, adultery and fornication, divulging false news, theft or stealing, fence burning, perjury and subornation of witnesses, blasphemy, and altering or defacing tobacco marks. Punishments in most cases were fines or whipping, standing in the pillory, or the payment of punitive damages.[18]

Acts of the Assembly played no significant role in the fields of contract or tort law. As to real property matters, the legislature sought to integrate security and certainty of holdings with the proprietary land grant system. One late development was the substitution of commissioners for common law actions in determining disputed metes and bounds.[19] In the area of probate and administration, a succession of provincial acts: (1) regulated in some detail the early jurisdiction of the Provincial Court in such matters and, after 1671, the duties of the Commissary General and the deputy commissaries, as well as the conduct of executors and adminstrators; and (2) sought to afford protection to the rights and properties of orphans.[20]

The Maryland legislature made no comprehensive attempt to regulate procedure in civil actions in any court, apart from a group of laws passed in 1642.[21] Subsequent acts passed from time to time were primarily concerned with such specific matters as the appointment of court days, the regulation of attachment and execution, appellate procedure, actions on accounts or on bills obligatory, arrest by *capias*, outlawry, amercements, special bail, the summoning of witnesses, the entry of actions, rules of evidence in certain actions, limitation of actions, stays and delays in execution, damage on protested bills of exchange, execution for public officers' fees, the reformation of jeofailes, proof of debts and discounts in bar, execution against defendants leaving the county, the recovery of

small debts, and compelling the attendance of jurors and witnesses.[22] Virtually all changes in procedure introduced by the legislature were designed to correct specific evils or shortcomings. Closely related were the acts of the Assembly regulating the practice and charges of attorneys, establishing the fees incident to litigation, and regulating abuses by such officers as the sheriff.[23]

Maryland's charter made no provision for wholesale extension to the colony of the laws and customs of England, including acts of Parliament. At the time of settlement there was no judicial authority with respect to the extension of the laws of England to a territory such as Maryland, unsettled except for the Indians, yet not a conquered country.[24] The general attitude in the Province was that, by executive or legislative action, some or all of the laws of England might be received as the colonists saw fit, saving those privileges and rights guaranteed by the charter.[25] The distinction between acts of Parliament passed prior to Maryland's settlement and those later enacted was not current in the seventeenth century. In any event, it was generally accepted that, unless otherwise specifically provided, the courts should be guided in the first instance by acts of the Assembly or general usage. A divergence of views developed as to the "rule of judicature" if the laws of the Province were silent. At least four basic views appear in a succession of acts and in legislative debates during the proprietary period: (1) the court was free to exercise its discretion — but since the proprietary controlled the judiciary this view found little favor in the House of Delegates; (2) the court was free to exercise its discretion including due consideration of the applicable laws of England; (3) the court was to judge by those laws of England not inconvenient to the Province or not inconsistent with its condition; and (4) the court was to judge by the laws of England without any discretion as to applicability. The fourth view ultimately prevailed in the proprietary period and was adopted in the early years of royal government, although the exact scope of the rule is vague. However, by reason of repeals and disallowance, for much of the period of royal rule no statutory rule of judicature existed.[26]

Whether adherence to one rule of judicature or another re-

sulted in significant variations in judicial standards in civil cases is difficult to ascertain from the surviving court records. However, in view of the few acts of Assembly of a substantive nature in the fields of private law, the rudimentary jury instructions seemingly in use during the period, and the many actions determined by a jury verdict on a plea of the general issue, such variations appear unlikely. Chancellor Kilty, in his extensive report on the English statutes in Maryland, concluded that, apart from those of a confirmatory nature, some 220 pre-settlement acts of Parliament and about 70 post-settlement but pre-1715 enactments were regarded as extending to the Province.[27] This is not to say that direct contemporary evidence exists as to each extension or that each statute played a day-to-day role. In evaluating the significance of these statutes it is perhaps of value to note that of the pre-settlement statutes almost 90 related to criminal law and its administration, almost 70 to civil procedure, about 50 to real property matters and 15 to probate and administration. The post-settlement statutes were divided as follows: criminal law and its administration — 15, civil procedure — 12, trade and customs — 17, religious matters — 15, real property — 9, and probate and administration — 2.

Many acts of Parliament appear to have been accepted by usage as part of the law of the Province. Despite the fact that a vast number of pre-settlement acts were tacitly rejected by the Province, the basis on which selection was made is hard to discern. Apart from prosecutions under the Acts of Trade and criminal proceedings, relatively few cases coming before the courts raised any issue of the force of particular acts of Parliament in the Province.[28] Attempts to clarify the situation by legislative action were largely abortive.[29] Yet by the period of royal government the better lawyers in the Province certainly possessed one or more of the available volumes containing selected acts of Parliament.

Those responsible for criminal prosecutions, the Attorney General in the Provincial Court and the clerks of the indictments in the county courts, obviously had familiarity with those statutes relating to criminal law and its administration. The earliest approaches to a substantive law of criminal offenses tended to limit the applicability of the laws of England, if invoked at all, to

offenses. For offenses extending to life or member, the laws of the Province constituted the rule of judicature — despite their deficiency in this respect. Ultimately, the distinction between greater and lesser offenses and that between civil and criminal jurisdiction was obliterated. Thus, when the laws of the Province were silent, the laws of England were constituted the rule of judicature.[30] As noted earlier, however, the statutory language was vague as to scope. In any event, no statutory rule of judicature existed for much of the period of royal government.

In the absence of reported decisions by the provincial judiciary it is difficult to assess the role of the common law of England in Maryland in areas of substantive law such as contracts, torts, bailments, wills and trusts, partnerships, and real property. However, from pleadings, from judicial rulings on demurrers, motions in arrest of judgment, writs of error, and appeals, and from a wide variety of legal documents, it would appear that the common law of England, together with acts of Parliament in some areas, constituted the governing law. As to the equity jurisdiction of the Court of Chancery, the surviving records are uninformative and in large part devoted to matters relating to proprietary land grants and escheats. Petitioners usually sought relief on broad grounds of equity and justice. With little guidance available in printed form and with the principles of equity still developing in England, there is no assurance that equity as administered in Maryland closely resembled that of Westminster Hall. While no "constitutional" opposition to the Court of Chancery developed in the Province, the role played by the Assembly in passing petitionary or private acts appears at times to have been quasi-equitable in nature and perhaps tempered such opposition.

The courts of Maryland in civil procedure adopted much of the common law, as modified by various acts of Parliament and as modified and supplemented by acts of the Assembly. While there was little use of original writs to commence an action (except for replevin and a few others in the Provincial Court), pleadings were based on a form of action concept and many followed closely the patterns of English form books. *Capias* was used as initial pro-

cess, but attachment of personal property, based primarily upon acts of the Assembly, played a greater role than the custom of foreign attachment in England. Pleading in most cases did not proceed beyond the declaration, plea, replication stage, yet after some procedural maturity had been achieved in the colony, arrest of judgment or reversal on writ of error or appeal was sought in many cases for defective pleadings. The exact role of *scire facias juratores*, qualification and challenge of jurors, and use of *tales de circumstantibus* is obscure. The court records yield little information regarding trial procedure. From assignments of error in the Provincial Court it appears that, at least on the county court level, there were frequent clerical lapses in the rendering of verdicts, the entry of judgments thereon, the issuance of final process, and the proper demarcation of the respective functions of jury and bench. Transfer and appellate procedure was vague in its outlines; while writ of error and the record brought up for review followed English prototypes, no use appears of a bill of exceptions. Execution in personal actions was largely by *capias ad satisfaciendum* although *fieri facias*, *elegit* and *levari facias* were also found. *Scire facias* was used to revive judgments. Little use was made of attaint or *audita querela*. No evidence appears of use of *recordari facias*, although the courts held by one or two justices of the peace apparently were not regarded as courts of record.[81]

The Court of Chancery in procedural matters followed the English pattern. Little effort was made by the Assembly to govern its procedure; some supplemental rules of practice promulgated by the court appear in its records.[82]

The role of the English common law in defining criminal offenses in the colony has been noted above. Procedure in criminal matters followed closely the common law, as modified by various statutes. From an early date, the grand jury presentment or indictment was used in the Provincial Court and county courts; informations were used sparingly. *Venire facias* constituted process; arraignment, trial by a petty jury, the right to benefit of clergy, and sentencing followed English practice. The right to jury trial was apparently grounded upon Magna Carta and the privileges clause of the charter. From certain scattered judicial entries it is obvious

that, at the Provincial Court level at least, the prosecutor, clerk, and court had available English form books detailing procedure in criminal causes step by step.[33] Whether all these procedural niceties were consistently followed, particularly in the trial of the seditious and malcontents, is doubtful. It should be noted also that the Assembly on several occasions intervened in criminal matters by acts of attainder, banishment or outlawry, and statutory fines.[34]

Legal historians of New England have tended to emphasize the influence of English local custom upon the course of legal development.[35] In early Maryland such custom probably played a role in the administration of manorial justice but the court baron, the court leet, and the "hundred court" were not significant factors in the development of the Maryland legal system.[36] The county courts, as they developed, owed little to their English counterparts. However, on the criminal side, there can be no doubt that the jurisdiction and practice of the justices of the peace in England exercised considerable influence.[37] Only two courts, (St. Mary's and Annapolis), were comparable to English borough courts. It may be that the early resort to attachment of personalty as initial process may be credited to the custom of foreign attachment found in London and other English cities, although Maryland's statutory form departed visibly from its putative counterpart.[38] In deprecating the impact of English local customs it should be noted that conditions of settlement in Maryland resulted in a scattered population. Manorial communities never developed in appreciable numbers; and there were few towns or cities. Thus there was no corpus of law made up of town regulations or a system of magistrates or town commissioners, as found in Massachusetts Bay under its first charter.[39]

The significance of the law merchant in Maryland law is a subject which still awaits investigation. References to the custom of merchants were commonly included in the declarations in the common law courts relating to protested bills of exchange. At least one book on the subject, Molloy's *De Jure Maritimo et Navali*, was owned by some lawyers in the Province.[40] That this body of law was resorted to by any city or admiralty court seems doubtful.[41]

Fi[redacted], it should be observed that the House of Delegates

from an early date drew upon the precedents of the House of Commons in asserting its rights and privileges. By 1682, however, the House of Delegates was ready to invoke the "ancient rules and Custome of this house."[42]

The importance of custom and usage in matters of substantive law is difficult to evaluate. Rarely is custom or usage found equated with acts of the Assembly, except in the commissions to the county courts, the Provincial Court, the Commissary General, and the Court of Chancery.[43] Custom certainly was important in the case of servants serving by "the custom of the country" in determining length of service and the right to freedom clothes, corn, and tools. Custom in this instance, however, received statutory support[44]. Judicial recognition of custom and usage also appears in connection with such subjects as the year and a day respite allowed administrators, the allowance to a widow from her deceased husband's estate, writs of partition, the compulsion upon a plaintiff to make oath to a debt sued for, and the levying of fines.[45] In at least one county, the usages on attachment went beyond the letter of the provincial act.[46] A close study of county court records might well reveal other usages of a similar nature. In the application of acts of Parliament within the colony, usage was perhaps the governing element in those instances in which reception was not attributable to some action by the provincial legislature or executive.

Some insight as to custom appears from the comment by Governor Nicholson in 1697 that:

> The People begin to pretend Custome, and claime it is their Common law, which if not timely prevented . . . may be a disservice, and prejudicial to his Majesty's Interest. For if they be allowed the benefit of their old Customs, t'will be in vain for me to prosecute illegall Traders, and forfeited Bonds etc. as also to endeavour to new modell the Country, whether in Church or State.

Nicholson later admonished the House of Delegates saying that it had no right "to insist upon any thing as matter of Custom in this Country which is not agreeable to the Laws of England."[47]

The commission from the governor was the principal device used to establish the jurisdiction of various courts and, [illegible]me

extent, rules of judicature in Maryland from an early date. Acts of the Assembly, on the other hand, provided minimum jurisdictional standards for the Provincial Court, Court of Chancery, and county courts, conferred limited jurisdiction upon one or two justices of the peace, and regulated procedural matters. Although such acts infringed upon the proprietary or royal prerogative, they were never seriously challenged. When in 1707 Governor John Seymour, in accordance with directions from the Board of Trade, sought to impose an assize system upon the Provincial Court, as part of his attempts to centralize the administration of justice, the Assembly's refusal to grant allowances to the assize justices frustrated the change and left the "country party" triumphant.[48]

The earliest grants of judicial authority were in the form of commissions to local commanders and conservators of the peace investing them with designated jurisdiction and included in most cases the powers of a justice or justices of the peace in England.[49] Commissions issued at a later date to the justices or commissioners of the county courts were patterned after the commissions to justices of the peace in England. These commissions conferred limited civil jurisdiction in real and personal actions (later commissions excluded actions involving title to real property) to be exercised according to the laws, orders, and reasonable customs of the province — or in part of the royal period, according to the laws, orders, and customs of England and the province. At the same time, such commissions conferred criminal jurisdiction not extending to life or member and comparable to that of quarter sessions in England.[50]

No commissions have been found for the early years of the Provincial Court. Proprietary commissions to this court from 1665 onward authorized the holding of all pleas relating to the conservation of the peace, all pleas touching upon proprietary rights and revenues, and common pleas, as well as the determining of all matters of equity.[51] The earliest commission of the royal period followed the proprietary model, except for the omission of equitable jurisdiction. Subsequent commissions followed in large part the format of the English commission to the justices of the peace and granted broad powers to hold pleas touching upon the conserva-

tion of the peace and common pleas, according to the laws and customs of England and of the province.[52]

From time to time commissions were granted to hold special courts of oyer and terminer and special civil courts comparable to county courts.[53] Two Chancery commissions, to a Lord Keeper of the great seal of the Province and two assistant judges (1695-96), provided for exercise of judicial powers according to equity and good conscience and according to the rules and customs of England and of the Province.[54] Several proprietary commissions to the Commissary General provided for proceedings according to the laws and the usage and customs of the Province.[55] The vice-admiralty courts of the royal period were also held by virtue of commissions from the governor as vice-admiral.[56]

Commissions, sometimes following a statutory mandate, were used early to define the powers of administrative officers such as the sheriff, coroner, and constable, at times incorporating by reference powers under the laws and customs of England.[57] At a later date, as the office declined in dignity and importance, commissions were not used in the appointment of constables. However, the oath of office might still refer to the governing laws and customs of England and of the province instead of spelling out the duties of the incumbent.[58]

Judicial practice in a sense may be considered as part of "custom and usage," discussed above. In establishing the procedures for their courts, the judges and justices, taking account of the circumstances of the province and of their courts, relied primarily upon the diverse and complex elements of the common law of England, acts of Parliament, and acts of Assembly. The fashioning of such procedures was a continuing process. Although changes, apart from those resulting from legislation or executive direction, are difficult to pinpoint, there can be no doubt that by 1715 the procedures of the Provincial Court and county courts had attained levels well in advance of those of the early decades of the colony. Legal historians tend to use conformity to the laws and customs of England as the criterion in appraising the procedures of colonial courts, but perhaps judicial adherence to established pro-

cedural norms, fair and efficient in their operation, whatever their origin, might constitute a better test of judicial administration. In any event, the records of the Provincial Court for the royal period show continued pressure from a bar, capable and learned by colonial standards, to conform to and improve upon accepted procedures.[59]

Scattered through the records of the Provincial Court and the county courts are various rules of court or "rules and orders," largely concerned with civil causes. The county courts were specifically authorized by a succession of provincial acts to promulgate such rules, but there was little uniformity in the number, substance, or date of these rules from county to county.[60] Those of the Provincial Court were promulgated in more piecemeal fashion over an extended period of time. No authority for such rules of the Provincial Court appears in any act of Assembly and presumably promulgation was the exercise of an inherent power.[61]

There was no body of decisional law in the colony in the accepted sense. During the period 1675-1715, however, there was a substantial volume of rulings by the Provincial Court on demurrers, motions in arrest of judgment, writs of error, and appeals from the county courts. Some of the rulings involved substantive rules of law; most involved procedural points. It would be surprising if the Provincial Court bar made no attempt to preserve some of these rulings in common place or precedent books. But it must be admitted that there is little evidence of any citation of Provincial Court precedents or overt adherence to *stare decisis* in the rulings of the court. The few authorities relied upon by counsel consisted of English cases and commentators, acts of Parliament, acts of Assembly, and maxims (some in Latin). In a great number of cases, propositions of law were confidently advanced by attorneys without citation of authority. It may be that such propositions were assumed to constitute part of the corpus of law familiar to the court, or perhaps supporting authorities were supplied in oral argument.[62] The great emphasis upon procedural error indicates, however, that the administration of justice in Maryland had attain-

ed by this period a higher level than some commentators on the colonial scene would be prepared to admit.

During the early proprietary period, some proclamations were issued by the governor pursuant to the power granted by commission to make "wholesome, reasonable and profitable" ordinances, edicts, and proclamations. Most of the proclamations were made in connection with settlement of the Province or served as a substitute for legislation. In the period of royal rule, the governors frequently resorted to the use of proclamations to complement or supplement existing laws. Some of these proclamations contemplated punishment under existing laws or gave a new interpretation to such laws. Still others seemingly created new offenses and proceeded on the theory that disobedience would constitute contempt.[63] For the most part these proclamations made little reference to jurisdiction. It is doubtful, however, whether in practice they added significantly to the jurisdiction of either the Provincial Court or county courts. In a few isolated instances, royal proclamations issued in England were put into effect in the Province.[64] A few scattered cases show that the Governor and Council resorted to conciliar orders to implement existing laws, including the ordering of court procedures.[65]

While it is true that law and authority in Maryland during the period under consideration presented a complex and, in some respects, uncertain picture, some evaluation of the constituent elements is possible. The charter and the later royal commissions were significant for providing the constitutional framework in which all the other elements operated. Probably the most important of such other elements consisted of the acts of the Assembly. In matters of public law peculiar to the conditions of the Province, only acts of the Assembly were significant. Next in importance rank acts of Parliament and the common law of England — the laws and customs of England. In certain private law fields the common law of England was the influential factor. Local acts, the common law, and acts of Parliament, all exerted influence in the areas of probate, administration, and real property. In ci[redacted]o-

cedure several elements were fused — English common law, acts of Parliament, local laws, and judicial practice. On the criminal side, acts of the Assembly were largely confined to establishing punishments for minor offenses. The substantive law for serious crimes and criminal law administration, on the other hand, were almost entirely governed by the laws and customs of England. The judicial commission served as an auxiliary device in establishing jurisdiction and imposing rules of judicature. The role of local custom and usage is difficult to assess from the surviving records; seemingly decisional law was not a material factor. Proclamations and conciliar orders played a rather minor role. The dominant characteristic of law and authority thus viewed was its complexity. Courts and lawyers operating in colonial Maryland, therefore, can scarcely be chided for failing to attain the levels of Westminster Hall.

FOOTNOTES

1. For counsel and assistance in the preparation of this essay I am indebted to Julius Goebel, Jr., Professor Emeritus, Columbia University School of Law; Dorothy Burne Goebel, Professor Emeritus, Department of History, Hunter College; Dr. Morris L. Radoff, Archivist and Records Administrator, Hall of Records, Annapolis, Md.; Gust Skordas, Assistant Archivist, Hall of Records; Lois Green Carr, formerly Junior Archivist, Hall of Records; and my wife Edith S. Smith. In the following notes the *Archives of Maryland* (Baltimore, 1883-date) are cited as *MA;* the *Maryland Historical Magazine* (Baltimore, 1906- date) as *MHM; Court Records of Prince Georges County, Maryland: 1696-1699* (Amer. Legal Records — Vol. 9, ed. Joseph H. Smith and Philip A. Crowl, Washington, 1964) as *PGCC;* and the manuscript *Provincial Court Judgment Books* at the Hall of Records, Annapolis, Maryland, by liber designations derived from clerical initials, such as WC, DS No. A, TL No. 1, etc. The designation Md. H.R. indicates other manuscript court records at the Hall of Records in Annapolis.
2. Whether the laws and institutions of Virginia should be considered a source of Maryland law and authority requires a more extended comparison than any now available.
3. The Latin original and an English translation by Thomas Bacon appear in *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies now or Heretofore Forming the United States of America*, ed. Francis N. Thorpe (Washington, 1909) III, 1669-1686. See also the textual criticism of John L. Bozman, *History of Maryland*, (Baltimore, 1837) II, 11. As late as 1678 the House of Delegates complained that the charter was available only in translation. 7 *MA* 12, 15. For proprietary commissions to the lieutenant general (governor) reflecting charter powers see 3 *ibid.* 49, 108, 151, 201, 323, 391, 439, 542; 15 *ibid.* 1, 105; 17 *ibid.* 247, 426. Proprietary instructions to the same officer are at 3 *ibid.* 324, 329, 335; 5 *ibid.* 63; 15 *ibid.* 9. Commissions to the provincial Council are at 3 *ibid.* 114, 159, 211; 15 *ibid.* 6, 109; 17 *ibid.* 252, 430. For conditions of plantation see 3 *ibid.* 47, 99, 223, 231, 233; 5 *ibid.* 54, 63; 17 *ibid.* 142, 239; John Kilty, *The Land-Holder's Assistant and Land-Office Guide* (Baltimore, 1808) c. III.
4. Passing references are at 1 *MA* 389-390; 2 *ibid.* 355-356; 5 *ibid.* 147.
5. On *Quia Emptores* see William Kilty, *A Report of All Such English Statutes . . . .* (Annapolis, 1811) 146. For a proprietary attempt to introduce copyhold into the Province see 1 *MA* 330-331.
6. For judgment of escheat of goods and chattels upon *felo de se* see 66 *MA* 136-137; 68 *ibid.* 93.
7. The records of only one manorial court (St. Clement's Manor) have survived (53 *MA* 627-637); a court probably was held at St. Gabriel's Manor. The impression given in Harry W. Newman, *The Flowering of the Maryland Palatinate* (Washington, 1961), 104-106 of a wide-

spread system of manorial courts is not supported by the available evidence. Charles M. Andrews concludes more cautiously "that the holding of courts leet and baron was practiced on many of the manors at the beginning is likely enough." *The Colonial Period of American History*, (New Haven, 1936) II, 295. J. Hall Pleasants believes that very few of the 74 manors appearing in the Land Office records functioned with court leet and court baron. 53 *MA* lxii.

8. 51 *MA* 383 (1671), 567 (1668).
9. 1 *MA* 300; 3 *ibid.* 507; 5 *ibid.* 136-137, 139-140; 8 *ibid.* 120-122, 130-131, 149-150; 13 *ibid.* 162. For a statement of the rights claimed see the 1638/9 proposed Act for the Liberties of the People. 1 *ibid.* 41. As to Magna Carta see 1 *ibid.* 83, 122, 398, 429; 5 *ibid.* 354; 7 *ibid.* 153-154; 57 *ibid.* 75, 543-544, 571-574; William Kilty, *A Report of All Such English Statutes* . . . . 9-12, 139-141, 205-208.
10. For criticism of the clause as uncertain and not reserving an appeal to the King. 3 *MA* 18. For a 1650 proprietary explanation that the clause granted royal jurisdiction see 1 *ibid.* 263-264. The "Royall Rights Jurisdictions Authorities and preheminences" were recognized by act of Assembly "soe farre as they doe not in any sorte infringe or prejudice the Just and Lawfull Lybertyes or privildges of the freeborne subjects of the Kingdome of England." 1 *ibid.* 300. For a complaint invoking the act see 5 *ibid.* 136-137. A 1661 act for a mint may have been based upon this clause. 1 *ibid.* 400, 414-415. See also the reservation of royal rights belonging to a court palatine in a 1638/9 proposed act. 1 *ibid.* 48.
11. 5 *MA* 344.
12. Governor Lionel Copley's commission and instructions are at 8 *MA* 263, 271; Governor Francis Nicholson's commission is at 20 *ibid.* 33; his instructions, at 23 *ibid.* 540. For Solicitor General Thomas Trevor's opinion as to proprietary rights after 1691 to fines and amercements and to *ferae naturae* see 8 *ibid.* 422-423; Assembly opinion thereon is at 13 *ibid.* 313-314.
13. As to the 1700 compilation see W. F. Dodd, "Maryland Compiled Laws of 1700," *MHM*, V (1910), 185; Lawrence C. Wroth, *A History of Printing in Colonial Maryland, 1686-1776*, (Baltimore, 1922), 22-26, 153.
14. These acts are scattered through volumes 1, 2, 7, 13, 19, 22, 24, 26, 27, 29, 30 and 38 of the *Archives of Maryland.*
15. For discussion of these actions in a representative period (1696-1699) see *PGCC*, lix-lxiii. County court commissions c. 1705 specifically conferred jurisdiction over popular actions and actions upon the statute. Prince Georges County Ct. Rec., Liber B, 380a, 410a (Md. H.R.).
16. But see the 1669 representation that vexatious informers were a public grievance. 2 *MA* 169.
17. Three 1642 acts respectively providing punishment for "certain greater capitall offences," "certain lesse capitall offences" and "some offences not capitall" are at 1 *MA* 158, 192-193. Later acts dealing

with serious offenses are at 1 *ibid.* 247, 248, 286, 287, 346, 350; 22 *ibid.* 568; 26 *ibid.* 340, 431, 514, 630; 27 *ibid.* 144, 146; 30 *ibid.* 298; 38 *ibid.* 122.

18. 1 *MA* 159, 193, 251, 286, 342-344, 375, 444, 455, 503; 2 *ibid.* 140, 273, 277, 398; 7 *ibid.* 201; 13 *ibid.* 439, 458, 477, 479, 487; 22 *ibid.* 477, 523, 553; 24 *ibid.* 98; 26 *ibid.* 231, 266, 321, 341; 27 *ibid.* 140; 29 *ibid.* 192, 329; 30 *ibid.* 233, 243, 304; 38 *ibid.* 19, 82, 119, 152.
19. 1 *MA* 159, 194, 288, 348, 487, 501; 2 *ibid.* 276, 305, 389; 13 *ibid.* 442, 449, 473; 19 *ibid.* 116; 22 *ibid.* 481, 544; 26 *ibid.* 262, 361; 30 *ibid.* 252, 323. As to town lands see 19 *ibid.* 257, 279; 26 *ibid.* 332; 30 *ibid.* 323.
20. For early acts "touching testamentary causes" and orphans' estates see 1 *MA* 108, 154, 188, 353, 354, 374, 493; 2 *ibid.* 325. For the earliest Commissary General commissions see 15 *ibid.* 24-25, 74-75; 17 *ibid.* 18, 129, 435. For the later acts see 7 *ibid.* 195; 13 *ibid.* 215, 430, 498; 19 *ibid.* 166, 209, 469; 22 *ibid.* 533; 24 *ibid.* 273; 26 *ibid.* 234; 38 *ibid.* 22, 41, 91. See also Edith E. MacQueen, "The Commissary in Colonial Maryland," *MHM*, XXV (1930), 190.
21. 1 *MA* 148-153, 184-187, 195. An act for the forms of proceeding in causes provided that the Provincial Court was to be guided by former precedents and usages of the court and, in defect thereof, by the forms of England in the same or like cases, except when specially provided by the law of the Province. 1 *ibid.* 150, 185-186.
22. 1 *MA* 232-233, 352, 361, 449, 485-486, 492-493, 496, 498, 502, 504; 2 *ibid.* 135, 142, 201, 206, 209, 218, 221-222, 289, 323, 395, 397, 411, 537, 562; 7 *ibid.* 70-71, 205, 323, 606; 13 *ibid.* 122, 444, 447, 449, 476, 481, 502, 514, 519, 521-522, 528, 530; 19 *ibid.* 237, 377, 470, 551; 22 *ibid.* 463-464, 466, 469, 500, 511-512, 528; 24 *ibid.* 201, 414; 26 *ibid.* 220, 283, 286, 298, 316, 324, 329, 346, 356, 358, 424; 27 *ibid.* 168, 174, 337, 364, 367, 481, 559, 577; 29 *ibid.* 191, 333, 336, 439; 30 *ibid.* 229, 235-243, 299, 302, 308, 317, 320; 38 *ibid.* 6, 22, 25, 56, 59, 93-94, 100, 101-103, 111, 143, 150, 154, 177.
23. Acts relating to attorneys are at 2 *MA* 132, 322, 409, 467; 13 *ibid.* 483; 22 *ibid.* 502; 26 *ibid.* 334, 348; 27 *ibid.* 360, 485; 29 *ibid.* 191; 30 *ibid.* 248; 38 *ibid.* 113, 160. Some acts relating to sheriffs are at 1 *ibid.* 448; 2 *ibid.* 132, 222, 322; 13 *ibid.* 471, 483, 484; 22 *ibid.* 465, 504; 26 *ibid.* 223; 30 *ibid.* 264; 38 *ibid.* 110, 127.
24. See Calvin's Case, 7 Co. Rep. 2a (1608) and the discussion in Joseph H. Smith, *Appeals to the Privy Council from the American Plantations* (New York, 1950), 464-476.
25. For representative acts extending the laws of England, or parts thereof, in particular areas see 1 *MA* 81, 97, 108, 151, 157, 158, 410, 487; 2 *ibid.* 130, 135, 139, 279, 398; 7 *ibid.* 60, 201; 13 *ibid.* 425, 537; 20 *ibid.* 422 (proclamation); 22 *ibid.* 568; 27 *ibid.* 335 (ordinance); 38 *ibid.* 103. For extension of the mortmain statutes before Henry VIII by conditions of plantation see 3 *ibid.* 227, 336. For so[illegible]f the resort to or recognized divergence from the laws of Engl[illegible]e 1

ibid. 107, 121, 348, 465, 501-502, 528; 2 *ibid.* 24, 54-55, 119, 249-250, 361, 391, 408, 425, 446, 563; 5 *ibid.* 138, 267, 556; 7 *ibid.* 72, 201-203, 354; 8 *ibid.* 34, 62; 13 *ibid.* 215, 257, 285, 297, 304, 361; 19 *ibid.* 8-9, 12, 16; 24 *ibid.* 239, 349-350; 25 *ibid.* 160-161; 26 *ibid.* 98-99, 109-110, 118; 27 *ibid.* 192, 220; 29 *ibid.* 253, 326-327. See also Provincial Court entries at 4 *ibid.* 38-39, 180, 249, 333; 10 *ibid.* 219, 256-257; 41 *ibid.* 368; 49 *ibid.* 213; 65 *ibid.* 32, 158, 229; 66 *ibid.* 423.

26. 1 *MA* 147 (An Act for Rule of Judicature), 184, 210, 448 (An Act Concerning Proceedings at Law), 487, 504; 13 *ibid.* 39, 43, 99, 103-104, 483; 19 *ibid.* 426; 22 *ibid.* 558-562; 24 *ibid.* 4-5, 104-107.
27. William Kilty, *A Report of All Such English Statutes . . .*, 139-187, 205-248.
28. 41 *MA* 10-11 (3 Jac. I, c. 7), 558 (Magna Carta c. 29 and Statute of Marlborough, 52 Hen. III); 51 *ibid.* 279-280 (27 Eliz. I, c. 8), 305 (several English statutes); WC, 188-191 (31 Eliz. I, c. 5), 499-503 (31 Eliz. I, c. 5; 21 Jac. I, c. 4), 681-690 (16 and 17 Car. II, c. 8); DS No. A, 4 (43 Eliz. I, c. 6), 10-12 (8 Eliz. I, c. 2), 297-299, 301-306 (29 Car. II, c. 3), 412-414 (23 Hen. VI, c. 10), 565-566 (5 and 6 Edw. VI, c. 16); SS, 13, 16-24 (Magna Carta, c. 29), 55-59 (16 and 17 Car. II, c. 8), 62-69 (statute against usury); TL No. 1, 552-553 (Magna Carta); I, No. 1, 399-402 (21 Jac. I, c. 16); VD No. 1, 234-239 (21 Jac. IO, c. 16), 297-300 (29 Car. I, c. 3).
29. In 1674 a proposal was made to list the laws of England applicable in criminal cases. 2 *MA* 347-349, 368-370, 372, 374-375. Agitation in 1704-06 resulted in a limited declaration. 26 *ibid.* 37, 122, 540-541, 545-546, 597-599, 601, 630. See also the later discussion at 29 *ibid.* 159, 365-367, 410-411, 419.
30. 1 *MA* 9 (*cf.* the lost act of 1634/5 which apparently applied the laws of England to serious offenses), 47 (proposed act), 147, 184, 210 (no reference to laws of England), 448, 487, 504; 13 *ibid.* 483.
31. The courts held by charter at St. Mary's and at Annapolis appear to have been courts of record. 51 *MA* 383, 567; Elihu S. Riley, *The Ancient City: A History of Annapolis, in Maryland* (Annapolis, 1887), 87. *Cf.* 19 *MA* 498; 27 *ibid.* 358.
32. For reliance on the rules of the Court of Chancery in England see 51 *MA* 8, 52, 290, 294, 487. For rules and orders promulgated see 51 *ibid.* 8, 15, 52, 419, 501; Chancery Record, Liber PC, 1671-1712, 321, 355, 379, 422, 427, 434, 451, 465, 470, 523, 677 (Land Office, Annapolis, Md.).
33. 49 *MA* 538-545; 57 *ibid.* 62-65, 74-75.
34. 1 *MA* 18, 23; 2 *ibid.* 540; 7 *ibid.* 104, 473; 22 *ibid.* 556; 26 *ibid.* 512, 513; 27 *ibid.* 139.
35. Julius Goebel, Jr., "King's Law and Local Custom in Seventeenth Century New England," *Columbia Law Rev.*, XXXI (1931), 416; George L. Haskins, *Law and Authority in Early Massachusetts*, (New York, 1960), 76-78, 167-174, 218-219.
36. The few commissions to administer justice within a hundred in Mary-

land were not patterned after the hundred court in England. 3 *MA* 70-71, 89-90. See also the proposed act making Kent a hundred and establishing a court therein. 1 *ibid.* 55-57.

37. The county courts were directed by acts in 1678 (7 *MA* 70) and later years to procure copies of Dalton's *Justice of the Peace* (*The Country Justice*) and Keble's *Abridgement of the Statutes* (*Statutes at Large*).
38. For reference to the custom of London see 66 *MA* 423.
39. Both St. Mary's and Annapolis had limited by-law powers. See references *supra*, note 31. For promulgation of by-laws for St. Mary's by the Council see 17 *MA* 418-423.
40. For pleadings see 65 *MA* 309, 333, 576; 66 *ibid.* 326; TG, 138; DS No. A, 18, 72, 82, 478-479; SS, 49-52, 52-55; DS No. C, 81-83; VD No. 1, 217-219.
41. See the reference to judgment by the custom or law merchant of England in the court of admiralty, proposed in 1638/9. 1 *MA* 46-47.
42. 1 *MA* 10, 398; 2 *ibid.* 42, 178; 7 *ibid.* 61, 114-115, 135-136, 138-139, 414-415; 13 *ibid.* 102, 156, 159, 176, 364-366, 417; 27 *ibid.* 535-536; 29 *ibid.* 170-172, 177, 243-244.
43. Two early Acts for Rule of Judicature in civil causes referred to "the law or most Generall usage of the province since its plantacion or former presidents of the same or the like nature." 1 *MA* 184. A similar reference appeared in two Acts Touching Causes Testamentary. 1 *ibid.* 155, 189. By a 1647/8 act, causes in the county courts were to be judged according to the laudable customs of the province, equity and good conscience. 1 *ibid.* 232. Lord Baltimore in 1678 stated as to the Province: "And where the necessity and exigencyes of the Provynce Doe not enforce them to make any Particular Lawes They use no other Lawe than the Lawe of England." 5 *ibid.* 264-265. The phrase "any law, custom or usage to the contrary notwithstanding", or some similar phrase, appears in many acts of Assembly. Whether this language, copied from the stock language used in acts of Parliament, constituted recognition of the role of custom is difficult to determine. At times custom may have been equated with the common law of England received in the Province.
44. 1 *MA* 53, 97, 409, 453; 2 *ibid.* 402-403, 525; 4 *ibid.* 361, 447, 464, 470-471, 539; 41 *ibid.* 417, 493-494; 57 *ibid.* 586; 66 *ibid.* 50, 203-204; 68 *ibid.* 107-108.
45. 4 *MA* 414-415; 10 *ibid.* 23, 108-109, 128-130; 41 *ibid.* 438; 49 *ibid.* 27, 32, 40, 129, 130, 388, 419, 424, 427. For servants "by custom of the country" see Eugene L. McCormac, *White Servitude in Maryland, 1634-1820*, Johns Hopkins Univ. Studies in Historical and Political Science, Series XXII, Nos. 3-4, 1904, c. IV.
46. *PGCC*, lxxxvii. See also the alleged custom at 24 *MA* 315.
47. 23 *MA* 88; 22 *ibid.* 40, 115. See also the reference to custom in the protest against the disbarment of James Crawford. *PGCC*, xxix-xxxi.
48. For the controversy over the assizes see 27 *MA* 4, 11-14, 17, 50-51, 58, 63, 68-69, 73-76, 88, 113-114, 183, 227, 235-236, 239, 279,

281-282, 285-287, 397-398, 447; 25 *ibid.* 216-217, 220, 226, 236; 29 *ibid.* 223.

49. 3 *MA* 59, 60-61, 62-63, 70-71, 80-81, 89-90, 216-217, 237-240, 257-258. See also the justice of the peace powers in commissions to Council members. 3 *ibid.* 159, 327, 439-441.
50. 3 *MA* 422, 534, 553; 5 *ibid.* 52; 15 *ibid.* 65, 216, 224, 256, 316, 323, 346, 395-398; 41 *ibid.* 87; 51 *ibid.* 74, 78, 81, 348, 353, 365; *PGCC*, 1, 186, 519; Prince Georges County Ct. Rec., Liber B., 379a, 380a, 409a, 410a (Md. H.R.). For two periods c. 1679-81 and c. 1705-15 two commissions were used in each county — a commission of the peace (criminal jurisdiction) and a commission of oyer and terminer or for the trial of causes (civil jurisdiction only or civil and criminal jurisdiction); a greater number of justices were usually named in the commission of the peace. At times councilors, commissioned as justices of the peace, sat on the county courts. Early oaths of a commissioner required judgment by the precedents and customs of the Province and acts of Assembly. 3 *MA* 423; 41 *ibid.* 89. Compare later oaths at 3 *ibid.* 553 (no standard) and *PGCC*, xxv (laws of England and acts of Assembly).
51. 15 *MA* 8-9, 110-111, 129-130, 357-358; 17 *ibid.* 250, 431-432; 66 *ibid.* 141-142; WC, 635-636.
52. DS No. C, 10-11, 38-40, 49-50, 323; TL No. 1, 1-2, 120-122; HW No. 3, 131; WT No. 3, 1-3, 612-614; WT No. 4, 165-168; TB No. 2, 65; PL No. 1, 233.
53. HW No. 3, 263 (1697 commission of oyer and terminer, to hear and determine according to the laws, orders and customs of England and of the Province); 20 *MA* 583, 589-592; 23 *ibid.* 376.
54. Chancery Court Record, Liber PC, 1671-1712, 294-295, 320-321 (Land Office, Annapolis, Md.).
55. 15 *MA* 24-25, 74-75; 17 *ibid.* 129. *Cf.* 17 *ibid.* 435. The contempt power granted was that of the Court of Chancery, 17 *ibid.* 18.
56. 20 *MA* 91-97, 172, 225, 238, 478-481; 23 *ibid.* 274, 321-322, 345, 368-369, 389-390; 25 *ibid.* 12, 61-67.
57. For the sheriff see 3 *MA* 61; *PGCC*, 2-3; for the coroner see 2 *MA* 130-131; 3 *ibid.* 91; 13 *ibid.* 515; for the constable see 1 *ibid.* 410-412; 3 *ibid.* 59-60, 70, 89; 13 *ibid.* 515-516; 26 *ibid.* 343-344; 30 *ibid.* 274.
58. 41 *MA* 91. The tithingman (1 *ibid.* 54-55) had no lasting significance.
59. DS No. C, 148-152, 173-176, 176-180, 287-291, 304-307, 356-361; TL No. 1, 28-32, 100-105, 222-225, 516-518, 520-523, 546-548, 713; TL No. 2, 121-122, 128-130, 130-132, 140-142; HW No. 3, 88-93, 159-160, 232-234; IL. 123-124, 124-125; WT No. 3, 502-505, 556-564, 565-572, 573-579, 784-791, 792-799, 799-808, 808-815; WT No. 4, 116-119; TL No. 3, 87-90, 108-110, 113-115, 116-119, 120-124, 234-241, 350-352, 607-609, 635-642, 642-648, 648-654, 654-659, 659-662, 662-665; TB No. 2, 23-25, 25-28; PL No. 1, 57-60, 60-67, 71-

75; PL No. 2, 1-3, 3-7, 7-11, 11-17, 107-112, 180-184, 226-229, 245-248; PL No. 3, 493-496, 497-508, 508-512, 652-656, 656-658, 674-678, 678-683; VD No. 1, 224-226, 254-256, 259-265, 265-272, 363, 366, 379-382. See also the cases starting with DS No. C in note 62 *infra.*

60. For the acts see 7 *MA* 70; 13 *ibid.* 521; 22 *ibid.* 463-464; 26 *ibid.* 283-285. For some county court rules see Charles County Ct. Rec., Liber S., No. 1, 61-64; Baltimore County Ct. Proc., Liber G, No. 1, 287, 417, 551-559; Kent County Ct. Proc., Liber I, 580-582 (all Md. H.R.); *PGCC*, 42, 105, 113, 350, 542, 615.
61. 66 *MA* 49; WC 68, 632, 636, 739, 762, 764, 768, 899; DS No. A, 225, 288, 450; TL No. 1, 700-701, 702; TL No. 2, 4-5; HW No. 3, 134; WT No. 3, 257-258, 629; TL No. 3, 264, 583; TB No. 2, 194; PL No. 1, 90, 234-235; PL No. 2, 23, 122-123, 129, 248, 348. For reliance upon court rules by a litigant see 67 *MA* 421; DS No. A, 152-154.
62. 66 *MA* 347-350, 425-426; 67 *ibid.* 68-70, 346-350, 352-354; 68 *ibid.* 5-6; WC 37-40, 152-154, 168-169, 171-175, 175-191, 191-195, 232-235, 261-267, 269-273, 322-325, 496-499, 499-503, 506-509, 510-514, 585-588, 624-628, 681-690, 731-732, 850-852, 863-869; DS No. A, 10-12, 17-18, 24-25, 33-36, 56-57, 72-74, 85-87, 248-249, 258-260, 297-299, 301-306, 407-410, 467-470, 565-567; SS 13-16, 16-24, 24-39, 55-59, 62-69; DS No. C, 111-119a, 125-132, 153-156, 162-164, 164-169, 169-172, 370-375, 380-385, 389-393; TL No. 1, 37-44, 210-213, 213-217, 228-232, 238-242, 243-246, 523-526, 531-538, 548-549, 551-552, 552-553, 553-554; TL No. 2, 135-137, 137-140, 150-158, 180-181; HW No. 3, 76-79, 235-238; IL, 104-106, 122-123; WT No. 3, 43-44, 399-406, 535-541; TL No. 3, 105-108, 669-673; TB No. 2, 11-23; PL No. 3, 462-465, 668-674; IO No. 1, 399-402; VD No. 1, 234-239, 297-300. See also Joseph H. Smith, "The Provincial Court and the Laws of Maryland: 1675-1715" in *Essays in Legal History in Honor of Felix Frankfurter* (New York, in press). For some description of law practice in Maryland in the early eighteenth century see Land, *The Dulanys of Maryland* (Baltimore, 1955), 6-22; *Proceedings of the Maryland Court of Appeals, 1695-1729* (Amer. Legal Records — Vol. 1, ed. Carroll T. Bond, Washington, 1933), xviii-xxix.
63. 15 *MA* 39, 65, 100, 127, 131, 136, 140, 154-157, 159-161, 177, 193, 194, 201, 211, 215-216, 228, 235-236, 391; 17 *ibid.* 114, 142, 178-180, 219, 239, 261, 269, 403, 404, 424; *PGCC*, xlviii-xlix.
64. 20 *MA* 339; 23 *ibid.* 444; 25 *ibid.* 300-301; 27 *ibid.* 350 (last two intended for plantations).
65. 15 *MA* 127, 380; 20 *ibid.* 314, 510, 517-518, 536, 582; 23 *ibid.* 120-121; *PGCC*, xlix.