

of *habeas corpus cum causa detentioni*, before trial and before issue joined; (3) by appeals to the Provincial Court for a new trial after judgment below; (4) by a writ of error and *supersedeas* after judgment on specified rulings of the court below.

Of the 24 appeals entered during this period, 20 are simply styled "appeals", 3 were brought up by writs of error, and 1 by writ of *certiorari*. Excluding 3 cases which appear as unfinished when this record closes, we find that the county courts were sustained in 9 cases and reversed in 7; appeals dismissed in 2 cases; and 3 cases were remanded to the county court for retrial. It is to be noted that 13 out of the total of 24 cases were appeals from the Calvert County court.

Two cases which were adjudged in the Provincial Court were appealed to the Upper House of Assembly, sitting as an appellate court and composed of the same men who had heard the cases below. One of these was the long drawn-out suit of *Balley vs. Staplefort* discussed elsewhere in this introduction (pp. xxxix-xl); *Arch. Md. II*; 362-368, 379-380). It is to be noted that the Upper House in this case reversed the decision of the Provincial Court. The other case appealed to the Upper House, *Hinchman vs. Manning*, had first been appealed from the Calvert County court to the Provincial Court where the decision below had been sustained. The proceedings of the Upper House for April, 1668/9, show that this case, which had been brought up by writ of error, was marked "retraxit" by Daniel Jenifer, attorney for the plaintiff, who had twice entered an appeal (*Arch. Md. II*; 161, 162).

In these cases appealed from the county courts to the Provincial Court there seems to have been a full retrial before the higher court, with the filing of the records in the court below and the hearing of testimony, the trial being before the court or by jury, as the litigants desired. In one instance the court divided, three to two, in its decision. The question involved in this case was as to whether or not the suit was "a personal action" depending between the parties. The Governor, the Chancellor, and Justice Evans ruled that it was, Justices White and Lloyd dissented (pp. 299, 321). In another case appeal was brought by the defendant on the ground that the jury ought not to have given its verdict because he appealed before it had gone out. The court denied the appeal on the ground that the record did not show this (p. 148). None of the 24 cases which came up on appeal from the lower courts seem to have been of especial interest. As far as can be told by the fragmentary record in some of the cases, with the exception of two which involved indentured servants, all the remaining cases were suits for debt, and as the county courts only had jurisdiction in cases involving less than 3000 pounds of tobacco, most of these suits were for small amounts. It is not clear from the court entry why on December 13, 1669, "A Certiorari should be Granted to John Richardson to transmit the records" of his appeal to the Provincial Court (p. 565), nor is the character of the case revealed, although it was unquestionably a civil suit. It is to be noted, however, that on this same day Governor Calvert had granted a pardon to Richardson, who shortly before had been found guilty of killing his wife by misadventure (pp. 599-600).