

all matters of fact in provincial court cases, civil and criminal, in the several counties, except in any special case where it might appear that justice could not be so equally administered to the parties as if trial should be appointed in some other place, "as fully and amply as any Justices of Assize and Nisi Prius in England used, or by Law ought or may try, hear and determine."¹ Subsequent enactments continued the assizes beyond the period of this record to 1769.² A noteworthy feature of procedure in these assize courts was the use of bills of exceptions in criminal cases as well as in civil, under the statute of 1732, anticipating by a hundred and forty years the allowance of bills of exceptions in criminal cases in the courts of the state.³ Special commissions of oyer and terminer were issued upon occasion both to justices of the provincial court and to justices of the county courts.

5. THE DISTRIBUTION OF JURISDICTION

Jurisdiction was distributed among these courts upon the basis, in civil cases, of amounts in controversy, and, in criminal cases, of magnitude of punishment which might follow conviction; and the distribution was altered progressively to localize the administration of justice as the population grew and spread. The firm establishment of the provincial court as a central court of first instance made the adjustment of original jurisdiction slow and a subject of contention; and as the lesser men gained in political strength it became in a measure a political cause. But opposition to the process was not without good reason. The prestige of the provincial court, with its superior bench and bar, and the convenience of some of the litigants, argued for the preservation of that tribunal in all its powers. On the other hand, the convenience of a greater number of litigants, of witnesses, and of jurors, contended with increasing force for distribution. The same reasons which in the thirteenth century in England had caused the organization of the nisi prius system to obviate the necessity of attendance at Westminster Hall worked for the distribution of trial jurisdiction in the settlement in Maryland, and led finally, in 1805, to the abolition of the central court.

At the time of the opening of this present record,⁴ the division of jurisdiction in the larger cases between the provincial and the county courts gave the latter exclusive jurisdiction for trials involving under 1,500 pounds of tobacco, and jurisdiction concurrent with that of the provincial court to the amount of 10,000 pounds of tobacco or £50. Judgments of the county courts for amounts of not less than 1,200 pounds of tobacco, translated in 1713⁵ at £6, were, however, subject to review by the provincial court on appeals

¹ Act 1723, ch. 23, *Archives*, XXXVI, 565.

² Acts 1732, ch. 1, *ibid.*, XXXVII, 523; 1736, ch. 22, *ibid.*, XXXIX, 496; 1766, ch. 5.

³ Act 1872, ch. 316. And see *Lord Proprietary v. King* (1732), 1 Harris & McHenry, 83.

⁴ *Archives*, XLI, 414; act 1692, ch. 10, *ibid.*, XIII, 447.

⁵ Act 1713, ch. 4, *ibid.*, XXIX, 336.