

in cases removed to the governor and council, too, appellants should "give in such security as aforesaid." The statute referred only to civil causes. Until 1705,<sup>1</sup> no writs of error were issued in England for review of convictions in criminal cases except by favor of the crown, ordinarily as a means of reversing or nullifying a conviction when the attorney general thought that such action was called for; and when resorted to for the purpose, as in cases in this book, the proceeding was consensual in fact, although in the regular forms of contest. The defendant procured the writ and removed the record, the attorney general ordinarily admitted the presence of error on the record, and the court, accepting the admission, reversed the judgment of conviction. In 1705, it was held in England that in cases of misdemeanor the writ should be granted as a matter of justice if there was reason to think that error had actually occurred at the trial, but the allowance in cases of felony and treason remained a matter of grace. The operation of the statute was restricted to three years' duration in accordance with the general practice, and this particular statute was revived and re-enacted in a series lasting beyond the time of this record.<sup>2</sup>

Upon further conference with the attorneys, the council ordered:

that there be three Prov<sup>l</sup> Courts held every Year, Viz<sup>t</sup> one on the last Tuseday in Feb<sup>ry</sup> whereat no Jurye causes shall be determin'd another on the third Tuseday in Ap<sup>l</sup> and last Tuseday in September for trying matters of Fact that the Court of Chancery sit the Munday following from the beginning of each Court and That the Gover<sup>r</sup> and Council Sit the Wednesday after the Court of Chancery to hear Appeals and Writts of Error, except Feb<sup>ry</sup> Court.<sup>3</sup>

The clerk of the council, Henry Denton, was, by order of the council of October 17, 1694, made "Clerk of the Gover<sup>r</sup>. and Council for hearing Appeals &ca. — he being thought the properst prson for the Execution of that Trust."<sup>4</sup> He had been in Maryland since 1684, and in the succeeding four years had taken up many tracts of land in his own name alone, and other tracts in partnership with a John Browning. In the records he is styled "Gent." Besides being clerk of the council he was also, in 1693, one of the justices of the quorum of St. Mary's county court, and, at other times, clerk of the same county court, register of the vice-admiralty court on the western shore of Chesapeake Bay, naval officer at Annapolis, and, unless there was another of the same name in the province about whom nothing else is now known, he was also clerk of the Talbot County court. Scarcity of clerks,

<sup>1</sup> *Rex v. Wilkes* (1770), 4 Burr. 2527, 2550; 4 E. & B. 871. And see, in this volume, the cases of *Vernon*, p. 534, and *Macnemara*, p. 231.

<sup>2</sup> Acts 1695, ch. 19, *Archives*, XXXVIII, 59; 1696, ch. 4, *ibid.*, XVII, 79; 1696, ch. 14, *ibid.*, XVII, 86; 1699, ch. 10, *ibid.*, XXII, 469; 1704, ch. 32, *ibid.*, XXVI, 286; 1712, ch. 5, *ibid.*, XXXVIII, 150; 1713, ch. 4, *ibid.*, XXIX, 336; 1721, ch. 14, *ibid.*, XXXIV, 270; 1729, ch. 3, *ibid.*, XXXVI, 453.

<sup>3</sup> *Ibid.*, XX, 139.

<sup>4</sup> *Loc. cit.*