

civil actions, the Lower House having resolved that the Quaker Affirmation Act, 7 & 8 Wm. III, c. 34 (1696), was "thought to be in force in this province."⁵⁷

The verdicts delivered by the jurors, after retiring for a "small time" to consider thereof, were general verdicts in such form as "we find for the plaintiff" or "we find for the defendants" or that "the Defendant doth owe to the said plaintiff the sum of two thousand one hundred and ninety pounds of tobacco part of the sum said in the plaintiff's declaration aforesaid" or that "the Defendant doth not owe to the said plaintiffe the said sum of six hundred and eighty pounds of tobacco as the plaintiff in his plea aforesaid has alleged." Following the verdict the court upon motion by plaintiff or defendant, depending on the verdict, would award judgment accordingly. In no case did a jury return a special verdict. In no case was there a motion for judgment *non obstante veredicto* or judgment notwithstanding the verdict.

An interesting deviation from English practice appears in the first jury trial in a civil case entered in the *Liber*, *Huggins v. Bennett*, a plea of trespass on the case tried in August 1696.⁵⁸ In English practice where the jurors were agreed and returned to the bar, before they delivered their verdict the plaintiff was bound to appear in court, by himself or by his attorney, in order to answer the amercement to which by law he was liable, in case he failed in his suit, as a punishment for his false claim. Even when amercements were no longer in use in England, the form still continued and if the plaintiff did not appear, no verdict could be given but the plaintiff was nonsuited. Therefore it was customary for a plaintiff, when he perceived that he had not presented evidence sufficient to maintain his issue, to voluntarily nonsuit himself by withdrawal from court. The crier was then ordered to call the plaintiff; if he or his counsel did not appear, he was nonsuited, the jurors discharged and the action was at an end, defendant recovering costs. The reason for this practice was that a nonsuit was more desirable to plaintiff than a verdict against him; for after a nonsuit, which was only a default, he might commence the same suit again on the same cause of action; but after a verdict had and judgment consequent thereupon he was forever barred from suing defendant on the same ground of complaint.

However, in *Huggins v. Bennett* after the jurors had returned "the plaintiffe being Called neither he nor his attorney did not Appeare. But the Court demanded of the Jurors aforesaid to Deliver in their verdict." Their verdict was that defendant did not owe plaintiff the 1000 pounds of tobacco as alleged in the declaration. The court then considered that Huggins take nothing by his writ but be in mercy for his false clamor and that defendant recover his costs and charges (the amount being left blank in the *Liber*). If this was an attempt by Joshua Cecil, plaintiff's attorney, to profit by his knowledge of English practice, it miscarried. However, it should be noted that the Prince Georges practice was consistent with that of the Provincial Court, at least for an earlier period, and in at least one county (Baltimore) it was necessary to embody the English practice in a rule of court.⁵⁹

57. 19 *id.* 448, 461.

58. *Infra* 28-29.

59. For the Provincial Court see 65 *MA* 158. *Cf.* the reasons for appeal in *Tench v. Hopkins*, an appeal to the Provincial Court from the County Court of Anne Arundel County. *PMCA* 68. The rules of the Baltimore County Court provided (*BCCP, Liber G, No. 1, 558*): "Ordered also that in every Action being tryed by a Jury at the time when such Juryes shall returne into Court in Order to give in their Verdict upon the matter of Controversie as they had in Charge after the Jury are called and before the Verdict be given in the Clerk shall call both Plaintiff and Defendant by their proper names who if they appear then the Clerk shall proceed to demand for whom they find But in Case the said Plaintiff shall not appear at the time of his being called as aforesaid