

In a number of cases the court assigned auditors to audit and adjust accounts between the parties and then to make report thereon to the court, usually at the next term. The basis of this power was a resolution of the House of Delegates, dated May 29, 1697, assented to by the Governor and the Council, reading as follows:

“Resolved that the severall Courts of Law, where the suits are hanging, Appoynt Auditors and have power to fine them upon Contempt and that when the bill of Cost is taxed such Auditors wages be therein ascertained and allowed them at the discretion of the Justices of that Court.”⁶⁰

In the earliest instances, both parties requested assignment of auditors, but from subsequent cases it appears that defendant alone usually would pray leave to have auditors appointed, two being the customary number. Usually no reason was assigned, reference being made to the above “Ordinance of Assembly”, but in one case defendant alleged that “a great part of the Said Debt is already paid.” In another instance, noted earlier, the court for its own convenience assigned auditors when defendant produced an account in bar of that sued on.⁶¹

The auditors assigned in most cases were either justices or had been, or later became, justices. Most frequently assigned was Robert Bradley (9), followed by John White (8), James Stoddart (4), William Barton (3), Thomas Holliday (2), William Hutchison (2), Samuel Magruder (1) and David Small (1). Others assigned were William Wilkinson (7), Richard Marsham (2), Nicholas Sporne (1), Christopher Baines (1) and Paul Bussey (1).

In making an assignment the court usually fixed a return date. Apparently the auditors filed a written report under their hands with the clerk prior to the return date. In substance, the reports relate that the auditors have stated or made up the accounts between the parties and found a specified balance or amount due plaintiff or defendant, as the case might be. In some cases the auditors might attach an itemized account to their report showing the balance due.

In the latter part of the period covered by the *Liber* auditors were frequently assigned in cases involving ordinary expenses, in which case the clerk might be directed to give to the auditors a copy of the ordinary rates fixed by the court. In this case the account sued on might be abated to conform to the legal applicable rates.

In *Dennis v. Prather*, an action of covenant, the court in the August 1699 term, perhaps on application of defendant, concluded to assigne them auditors, both parties entering into a recognizance to stand the award made. It was agreed by both parties that Robert Bradley and James Stoddart “Should ajust matters between them and returne their auditt by the next Court in ordar to which all the papers Filed in the office Should be Delivered up to the auditors”. Each then entered into a recognizance of £20 sterling to stand the award.⁶²

In most cases the court entered judgment upon the report of the auditors, including an award of costs, without further ado. However, in *Charlett's Administrator v. Graves' Administrator*, when the auditors reported in the January 1697/8 court that defendant was indebted unto the estate of plaintiff in the amount of 884 pounds of tobacco, defendant immediately produced testimony under oath

nor noe Attorney in his behalfe then noe Verdict shall be Accepted of by the Court but the Jury thereupon dismist and a Non Suite awarded against the Plaintiff and he left to the liberty of Bringing his Action De Novo.”

60. 19 MA 516. Cf. 19 id. 224, 246, 511.

61. *Infra* 288, 439-40.

62. *Infra* 529, 541.