

As previously observed most judgments contained an award of costs and charges. The statutory basis for an award of costs and charges is found in a 1692 act which primarily gave two justices summary jurisdiction to award execution in certain proceedings by creditors but provided as well that, in such proceedings, "as in all other civil causes in their Majesties Courts within this Province, the Party cast shall satisfy the cost and court charges." It should be noted, however, that the July 1699 act which covered the same ground, among other things, and by implication at least, repealed the 1692 act, made no provision for costs and court charges "in all other civil causes."<sup>68</sup>

It may have been assumed that the county courts had power to award costs, apart from any power granted by provincial statute, perhaps on the basis of the extension of 6 Ed. I, c. 1, 23 Henry VIII, c. 15 and 4 Jac. I, c. 3 to the province. A 1692 act provided that in an action based upon an account, if demand were first made as provided in the act, then it should be lawful for the creditor to sue the debtor for the debt "and recover against him all such Costs and damages as upon legal Tryall in any Court of this Province shall be adjudged against him." In the event the creditor sued contrary to such provisions, the creditor would "loose all his Costs of such Suite" and be liable to satisfy the debtor for all such damages as accrued from such vexatious and unjust suit.<sup>69</sup>

A July 1699 law reiterated the above provisions and, in connection with a provision allowing defendants to prove partial payment of the debt sued for, made reference to judgment for plaintiff "with Cost of Suite," provided the balance, in suits in the county courts, exceeded 200 pounds of tobacco or sixteen shillings, eight pence.

Another 1692 act—An Act for Amerciaments in the Provincially and County Courts—also appears to have assumed the power of the county courts to award "damages and costs". This act, designed to prevent the raising of many suits upon frivolous occasions by litigious persons, provided that any person, whether plaintiff or defendant, cast in any cause in the county courts should be amerced, besides the damages and costs to the recoverers, thirty pounds of tobacco.<sup>70</sup> In 1692 the amercement was characterized as "an Antient Prerogative of the Crown by Custom immemoriall for their false Clamour in his Court of Judicature". The clerks of the severall county courts were to keep an exact account of the ameracements and deliver or send them to the several sheriffs in the particular counties who were required to collect them with the levy, were empowered upon default of payment to make distress, and were commanded not to return any arrears, except in the case of executors or administrators who could not pay without an order. The clerks of the respective courts were also to give to the chief justice of each such court a list of the ameracements such court imposed.<sup>71</sup> However, it is not until the September 1699 term that we find an order entered in the *Liber* that the clerk make a list of all ameracements since the establishment of the county and give a copy thereof to the sheriff to collect with the county levy.<sup>72</sup> An amercement is indicated

68. 13 *MA* 484; 22 *id.* 504.

69. 13 *id.* 530. As to the extension in part of 6 Ed. I, c. 1 to the province see Kilty, *op. cit. supra* 210–11 and Alexander, *op. cit. supra* 79. As to 23 Henry VIII, c. 15 Kilty commented that "it is under this statute that defendants prevailing in suits recover their costs . . . There are several acts of assembly respecting costs, but none that interfere with this statute . . ." *Op. cit. supra* 231. As to 4 Jac. I, c. 3 see Kilty, *op. cit. supra* 236. As to sections 1 and 2 of 8 and 9 Wm. III, c. 11 see *id.* 243–44.

70. 22 *MA* 529.

71. 13 *id.* 313, 514; 22 *id.* 466. See also the comment by Kilty on c. 14 of Magna Carta. *Op. cit. supra* 10–11.

72. *Infra* 615.