by the words that defendant is "in mercy"; an entry that defendant remain in custody until satisfaction made may indicate use of a *capiatur* in cases such as trover and conversion.

A few statutes dealt with costs and charges in particular types of actions. Acts passed in 1692 and 1699 for ascertaining what damages should be allowed upon protested bills of exchange provided that no person bringing suit in any court of the province against a resident upon any bill of exchange, drawn for any sum of money whatsoever payable in England or elsewhere and brought in protested, should be allowed more than twenty pounds per hundred over and above the debt sued for and recovered together with ordinary costs of suit, any law, statute, usage or custom to the contrary notwithstanding. Another 1692 enactment provided that in any action on the case for slanderous words brought in any court of record in the province, if the petty jury or the jury making inquest of damages found or assessed the damage under forty shillings, then the plaintiff should recover only such costs as the damages given or accrued amounted to. [73]

The records of the county courts of some other counties at times reveal the breakdown of costs and charges but the *Liber* is not so revealing. From such other records it appears that costs and charges usually consisted of the fees of the various officers of the court such as the clerk, sheriff, and cryer, an attorney's fee of 100 pounds of tobacco and an amercement of 30 pounds. The fees of the officers of the court were, of course, set forth in the laws; attorney's fees have been referred to earlier.

Arrest of Judgment

In several cases following judgment motions were made in arrest of judgment. In *Burgis* v. *Mockeboy* in the November 1696 court, plaintiff, in an action of trespass on the case, alleged that in August 1691 he had lent to defendant for the use of Colonel Ninian Beall "one Scale Protractor Compass Chaine and deviders" valued at one pound, eight shillings sterling, and that, although demand had been made, defendant refused to return the instruments to the damage to plaintiff of two pounds, ten shillings sterling. Following a plea of the general issue, defendant put himself upon the country and the jury found for the plaintiff. Plaintiff prayed that judgment be rendered on the verdict but defendant said that the court ought not to proceed to render their judgment on the verdict since he had good cause in arrest of judgment and prayed time to file his reasons, whereupon the court granted defendant twenty days in which to file the same. At the January 1696/7 court William Bladen, attorney for Mockeboy, assigned as reason for arrest of judgment that the instruments in question, by the plaintiff's own showing, were lent to defendant and consequently to be returned in kind, that plaintiff ought to have brought his action in detinue, failing which not only the verdict but all other proceedings in the action were "vitious." Wherefore Bladen prayed judgment. Decision was put off until the June, 1697 court. At this court the attorneys for both parties appeared and the "Reasons in Arrest of Judgment" being found "not Suffitient in Law to Stay the Same," judgment was accordingly given for plaintiff. [74]

In *Harwood* v. *Ryley*, an action of trespass on the case in the January 1696/7 court for damages resulting from failure to pay a note for 400 pounds of tobacco, the jury returned a verdict that defendant did not owe plaintiff the sum sued for. Plaintiff craved liberty to move in arrest of judgment and was granted until the next day to file his reasons in arrest. However, the plaintiff and his attorney made

73. 13 *MA* 449; 22 *id.* 464; 13 *id.* 482.
74. *Infra* 100–01, 198–99.