

The first such removal was in *Short v. Gardiner*, an action of trespass on the case for 8000 pounds of tobacco in the November 1696 court, the gravamen of the injury alleged being that defendant, John Gardiner, had openly and publicly stated that John Short had taken a false oath, was forsworn, and was a forsworn fellow and that he (defendant) would prove it. The entry in the *Liber* merely noted the removal by *habeas corpus* and ordered that a transcript of the action should be sent to the Provincial Court which was done. The records of the Provincial Court for 1699 show that the cause was removed by writ of certiorari; that, after an imparlance, plaintiff Short defaulted, and that it was adjudged that Gardiner recover 3021 pounds of tobacco as costs and charges.⁹⁶

In *Edmundson v. Plumer*, an action of trespass on the case for £36 damages, also in the November 1696 court, defendant's attorney produced a writ of *habeas corpus* for removal of the cause to the Provincial Court and the justices ordered a transcript sent up. The records of the Provincial Court for 1697 reveal that, after an imparlance, the cause was entered as agreed.⁹⁷ In *Carleton v. Crofts* in the March 1697/8 court, an action of trespass on the case involving an account of 1784 pounds of tobacco, damages to the amount of 3000 pounds of tobacco were alleged. After John Meriton had appeared and imparled, he then produced in court in the next term "a writt of Certiorary or Habeas Corpus for the Removeall of the aforesaid Action to the Provinciaall Court which Said writt was by the Justices here Allowed off." The records of the Provincial Court for 1698 show a jury verdict for defendant and judgment thereon including 1491 pounds of tobacco for costs of suit.⁹⁸

Review

As noted earlier, the judicial hierarchy in Maryland c. 1696–99 contemplated that the Provincial Court exercise appellate jurisdiction over the several county courts by appeal and by writ of error. However, an October 1695 act provided that no person or persons whatsoever against whom any judgment was given in any county court should be allowed any appeal or writ of error to the Provincial Court in the event the original debt or damages for which such judgment was given did not amount to £6 or twelve hundred pounds of tobacco. This act also provided that no execution upon any judgment obtained in any county court should be stayed or delayed or any *supersedeas* upon any such judgment granted or issued forth upon any appeal or writ of error from such court to the Provincial Court, unless the person making such appeal or bringing such writ, or some person acting in his behalf, should immediately upon making such appeal or suing out such writ enter into a bond in double the sum recovered with sufficient sureties approved by the justices or the Keeper of the Seal (to whom application for the writ of error was to be made). The bond would remain in full force and effect if the party making the appeal or suing out the writ of error did not (1) pursue the directions of the act (see below) at the next Provincial Court, (2) prosecute the appeal or writ of error with effect, and (3) in case the judgment was affirmed, satisfy respondent for all the debts, damages and costs adjudged in the county court, as also for all costs and damages awarded by the Provincial Court.⁹⁹

96. *Infra* 98–99; *PCJ, Liber HW, No. 3*, 101, 214. As to any removal by *habeas corpus* or certiorari after issue joined see the comment of Kilty on the extension of 2 Hen. V, St. 1, c. 2 and 21 Jac. I, c. 23. *Op. cit. supra* 226, 238.

97. *Infra* 99–100; *PCJ, Liber HW, No. 3*, 100, 244.

98. *Infra* 340–41; *PCJ, Liber IL*, 76–78.

99. 38 *MA* 59. See also reference to "Rules of the Provintiall Court." *Infra* 237.