As to actual practice, in case an appeal was taken to the Provincial Court an entry was made in the *Liber* to the effect that the party taking the appeal, in his own person or by his attorney, "came and appealed to the Provincial Court." A description of the recognizance required by law was then entered in the *Liber*. In the case of a writ of error the party suing out the writ presumably would make application to the Keeper of the Seal, and then present the writ to the county court. The exact procedure in this respect is not clear since no use of writs of error appears in the *Liber*. Although attaint received statutory recognition, no resort to such procedure is found in the *Liber*.

In all only four appeals to the Provincial Court appear in the *Liber*. In *Lowe* v. *Marsham et ux.*, *Tracey* v. *Garrett*, and *Davis* v. *Garrett*, all tried by juries, although security was given in each case for due prosecution of the appeal, only reference to the *Lowe* case appears in the records of the Provincial Court. In that case, involving an action for damages suffered in connection with the loan of a horse, the Provincial Court reversed and set aside the judgment for defendant administrators in Prince Georges County Court. In the reasons for appeal it was asserted that said court had no jurisdiction over the matter, removed from Calvert County Court by defendants, residents of Prince Georges County, in that by virtue of the division of counties, attendant upon the establishment of Prince Georges County, the locus of the transaction and the residence of the plaintiff and most of the witnesses became part of St. Marys County. The witnesses as residents of such county could not be compelled to testify by process of Prince Georges County Court and thus the verdict went against plaintiff. [103]

In *Ryley* v. *Sewell*, an action of trespass on the case tried at the January 1697/8 court for the balance of an account, an appeal was taken by defendant from a judgment of the court, which tried the action following a plea of the general issue, for 1810 pounds of tobacco and costs and charges. [104] On appeal the defendant set forth several reasons of appeal: [105]

1. Plaintiff had brought an action of *indebitatus assumpsit* against the defendant for a sum supposed to be due on the balance of an account for work done. Defendant asserted that no such action could lie against him but an *insimul computassent* or a *quantum meruit* for the balance of the supposed account, it appearing plainly by the plaintiff's own showing in his account annexed to the declaration it was for work done and therefore a *quantum meruit* and not an *indebitatus assumpsit*.

2. According to the rules of the common law all counts, declarations and pleadings ought to be certain and to contain verity and truth which this did not. First, it was said in the declaration that the assumpsit was made the 23 of March 1697, whereas in truth, if any such assumpsit was made, it must have been in the year 1689. Plaintiff since that time had never done any work for defendant so he was barred by the Act of Limitation. Secondly, the account annexed to the declaration had no day or month mentioned in it, as it ought to have. Thirdly, the plaintiff's oath annexed to the declaration to prove the assumpsit was dated "March 23, 1696".

3. The issue joined was assumpsit or nonassumpsit which was matter of fact and could not be tried by the court but according to the several rules of the common law must be tried by a jury of twelve men, for the judges are judges of

103. *Infra* 73–75, 235–40; *PCJ, Liber IL,* 121–22. The reasons for appeal appear inconsistent with the provisions of the statute establishing Prince Georges County. See 19 *MA* 212–15.

104. *Infra* 318–19.

105. *PCJ, Liber IL,* 122–23.