

upon certain days appointed by act of Assembly, to make inquiry upon the premises doing thereon what to justice appertained according to the laws, orders and reasonable customs of the province.<sup>1</sup>

The second Nicholson commission, dated June 4, 1697, was in substantially the same form except that five, instead of four commissioners constituted the court, and that the chastisement clause in the first part was expanded to offenders against the form of the laws *and orders* of the province.<sup>2</sup>

The commission from Governor Blakiston, dated August 7, 1699, was also in substantially the same form as the earlier commissions except that the number necessary to constitute a court returned to four, and the chastisement clause was further altered to offenders against the form of the laws, orders *and constitutions* of the province.<sup>3</sup>

Presumably the commissions to the several county courts were intended to be uniform but there are some variations in language in the various commissions as recorded in the county records, probably arising from clerical laxity and of no jurisdictional significance in practice. In any event these commissions in their structure and phraseology used the proprietary commissions to the county courts as the prototype. The proprietary commissions in turn, in setting forth criminal jurisdiction, had adopted much of the style and format of the contemporary English commissions of the peace.

The principal differences between the English and Maryland commissions were several. The former was an assignment to keep and cause to be kept "all ordinances and statutes"; the Maryland commissions read "all laws and orders." The chastisement clause of the first *assignavimus* in England used the "all ordinances and statutes" terminology, as opposed to the several variations adverted to above. In England two justices of the peace (one being of the quorum) were authorized to hold sessions of the peace, as opposed to four or five in Maryland (at least for Prince Georges County). The Maryland commissions omitted any provision for taking security for the peace or good behavior, although this omission appears to have had no effect in practice. The English commissions, after enumerating the offenses into which justices might lawfully inquire, ended with the words "And of all and singular other misdeeds and offenses, of which Justices of Peace may or ought lawfully to enquire." The Maryland commissions substituted the language, "And of all and singular other misdeeds and offenses. . . of which Justices of the Peace in England may or ought lawfully to enquire." What was the effect of this variation? Did it constitute a reception in the province of all the common law offenses of England—at least those over which justices of the peace had jurisdiction? Was it intended to receive the offenses over which justices of the peace had jurisdiction in England by act of Parliament? If so, was the intendment limited to those offenses handled in quarter sessions or did it include those cognizable in England by one, two or three or more justices out of sessions? In the Maryland commissions, did the following clause "against the Laws and Orders of this our Province" have a limiting effect upon the reference to the jurisdiction of justices of the peace in England? We have seen no discussion of this problem of construction in the *Liber* or elsewhere. The 1692 act (An Act concerning Proceedings at Law) providing that where "the

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1. *Infra* 1-2.

2. *Infra* 186-87.

3. *Infra* 519-20.