

manship, the jurisdictional lines are blurred. A number of provincial laws provided for enforcement by means of either informations or civil actions in either the Provincial Court or the county courts. Since there appears to have been greater resort to civil actions under these statutes, they are discussed under Section VII below.

#### *Concurrent Statutory Jurisdiction*

Acts of Assembly of 1694 and 1699 provided punishment for the offenses of blasphemy, fornication and adultery, but were silent as to jurisdiction.<sup>6</sup> While, except for third offenders, no reason appears why the county courts could not exercise jurisdiction in blasphemy cases, it is likely that, in view of the stiff penalties provided, such offenses would normally come before the Provincial Court. By the 1694 statute fornication was punishable by a fine of £1 or 400 pounds of tobacco, adultery by a fine of £2 or 800 pounds of tobacco. (Offenders lacking goods and chattels sufficient to satisfy the fine were to receive such punishment as the justices should think fit, not extending to life or member.) The 1699 act provided, as an alternative to fines in fornication and adultery cases, corporal punishment by whipping at the court's discretion, not exceeding thirty-nine lashes. The reference to fines for fornication "by the Court before Whom such Matter shall be brought" indicates that the county courts had concurrent jurisdiction in fornication and adultery cases. This is confirmed by the *Liber*.

A 1692 act provided that for the wilful and malicious burning of fences to the injury of any inhabitant the offender should suffer such penalties or undergo such punishment as the laws of England provided against such practices or was to make restitution by paying treble the damages sustained, as the justices hearing the case should determine.<sup>7</sup> Seemingly the Provincial Court and the county courts exercised concurrent jurisdiction; the members of the Provincial Court are referred to as "justices" in judicial records and acts.

A 1694 act (An Act Concerning those Servants that have Bastards) provided that a female servant having a bastard child and unable to prove paternity should be liable to satisfy her master for the damage sustained by servitude or otherwise as the court before whom the matter was brought thought convenient.<sup>8</sup> The *Liber* confirms that this act served to confer jurisdiction on the county courts, as well as the Provincial Court. If paternity were proved, then the party charged, if a servant, was to satisfy half the damage and, if a freeman, the whole damage, by servitude or otherwise as the court thought convenient. If the party charged was a single freeman and had promised marriage prior to the begetting, he was to have the choice of marriage or recompensing the abuse as the court should adjudge. While this law made no reference to fines or corporal punishment, the *Liber* shows such punishment imposed by the justices in bastardy cases involving servants. A related 1692 act provided penalties for "free born English and white women," free or servant, marrying or having children by negroes or other slaves.<sup>9</sup> It is not clear whether the county courts had jurisdiction over all the offenses covered by this act; the law specifically provided, however, that the justices of the county courts should have exclusive jurisdiction to adjudge damages in the event the offender was a servant and bore a child during her period of service.

6. 38 *id.* 19; 22 *id.* 523.

7. 13 *id.* 487. Cf. note 4 *supra*.

8. 38 *MA* 20.

9. 13 *id.* 546.