

to give security for his good behavior and appearance at the next court. However, in one case before the Provincial Court, not arising in Prince Georges County, it was claimed to be error to accept a presentment and proceed to judgment on the same day without the issuance of a *venire facias*. Of course, if an offender summoned by *venire facias* failed to appear, a warrant might issue to the sheriff to take the offender into custody and have him at the next court. Why, following presentment of an "Orphan Court" matter, a subpoena issued to complainant constituted process, is not apparent.²³

Trial following presentment commenced with arraignment—the defendant came in the custody of the sheriff to the bar of the court, the presentment was read to him (although this does not clearly appear from *Liber* entries) and he was asked how "he would Acquitt himself"—whether he were guilty or not guilty.

Whether a defendant who appeared on a *venire facias* or a recognizance was regarded as entitled to traverse the presentment and in effect imparl to the next court does not appear; no such attempt is found in the *Liber*. In a few cases when no person appeared to prosecute or sufficient proof of the charge was lacking, a *nolle prosequi* was ordered entered at the instance of the clerk of the indictments. In the case of a presentment against Matthew Mockeboy the *venire facias* was marked "Quasht" in the criminal docket but the reason for the action and when and how the objection to the presentment was raised does not appear.²⁴ In several instances the court ordered that the defendant go without day. Apparently it was not customary to discharge by proclamation under these circumstances.²⁵

A substantial number of defendants pleaded guilty and confessed the indictment or impliedly confessed by submitting to the judgment of the court. The wording of these pleas as entered in the *Liber* varies and the difference between a plea of *cognovit* and of *non vult* is not always clear. These pleas were apparently made orally and by the defendant in his own person. In one case a defendant refused the court's offer to assign counsel to plead for him and submitted to the judgment of the court. In no case did an accused stand mute. Presumably a plea of guilty was endorsed on the indictment and the court proceeded to sentence.

In some cases defendant in his own person or by an attorney specially admitted

23. In March 1697/8 the Council recommended that the House consider whether the practice of sending out *venire facias* against servants and others having bastards might not be "too Charga-ble and dilatory Way of proceeding" and whether there was a more expeditious way to hear and determine such matters. 22 *MA* 20, 101. Cf. the proposed restrictions on clerks of the indictments. 22 *id.* 23–24. For the Provincial Court case, see *PCJ, Liber IL*, 119. One of the grounds urged for reversal by the Provincial Court of a Somerset County Court sentence was that process on the indictment was returned by the under-sheriff rather than the sheriff. *PCJ, Liber WT, No. 3*, 232–38. For the "Orphans Court" matter involving David Small as complainant see *infra* 183–84, 212.

24. See the cases discussed in Section VI *supra*. In *Lewis v. His Majesty and Lydall*, in urging reversal by the Provincial Court of a June 1695 sentence of the Talbot County Court for the felonious taking of two hogsheads of tobacco, it was claimed defendant should have been allowed to traverse the indictment and show that he had a property in the tobacco and not forced *ore tenus* to plead the general issue *non culp*. *PCJ, Liber IL*, 119. In *His Majesty v. Oates*, in March 1700 in Prince Georges County Court, defendant demurred to the indictment but the court, overruling the demurrer, then proceeded to sentence. *PGCJ, Liber B*, 29.

25. Compare the discharge by proclamation in Charles County Court (*CCCR, Liber X, No. 1*, 273) as follows: "Mary Jones being Presented for Stealing of Severall Goods of William Seargeant Late of Charles County Planter against the Peace of our Sovereign Lord the King etc.: And the Justices here have Inquired Thereof And no such Thing Can Finde And Because itt is Averred here in Court that the Said Mary Jones is of Good Fame Proclamation is made for our Sovereign Lord the King as uses that if there by any one that will Informe the Justices here or the Attorney of our Sovereign Lord the King of any Trespass Contempt or Misdemeanor Committed against his Majesties peace by the Said Mary Jones or Will Prosecute against the Said Mary Jones for any Trespass Contempt or Misdemeanor Committed by the Said Mary against his Majesties Peace he Shee or they might Come and Should be heard and none Came etc."