

by the court pleaded not guilty and then "put himself upon the Country." This plea may have been in writing; the notation in the *Liber* "and Joshua Cecell [clerk of the indictments] for his Majesty also", following defendant's plea, indicates that an issue had to be made up. In no criminal proceeding did a defendant attempt to "put himself upon the Court."²⁶

In each of the twelve cases in which a presented person pleaded not guilty, he was tried by a petty jury; verdicts of guilty were returned in nine cases. To what extent such defendants were entitled to jury trial is not clear from the laws. The 1692 law punishing theft provided that convictions thereunder (and under the act punishing hog-stealing) "be upon and by a Verdict of twelve good and lawfull men of the vicinity or neighbourhood and not otherwise."²⁷ However, this provision was exceptional; usually the acts establishing offenses were silent as to method of trial.

Once issue was joined on a plea of not guilty, the court would issue a writ of *venire facias juratores* directing the sheriff to return a panel of twelve jurors (in one case, "twelve good men of his balywick") to try the issue joined. This is usually indicated in the *Liber* by a notation that, "It is Comanded the Sheriffe that without delay he cause to come here twelve etc. by whom etc. and who neither etc. to recognize etc. because as well etc." This is the type of formalized clerical entry found in English usage denoting the issuance of a *venire facias juratores*. (Admittedly this entry might conceal the use of a mere award; the several statutory schedules of fees are uninformative.) Whether any property qualifications of the jurors, presumably freeholders, were set forth in the writ is not clear.²⁸

It seems likely that the writ was returned by the sheriff with an endorsement as to execution and a list of jurors noted on the writ or attached thereto. This is indicated by the entry of the names of the jurors, one of whom was designated as foreman, in the *Liber*, sometimes along with that of the sheriff. However, the exact mechanics of summoning a petty jury is not evident from the *Liber* or from the laws. It may be that the justices sent out a general precept to the sheriff prior to the court's sitting to prepare the necessary panels. Most likely, individual jurors were summoned by the sheriff by means of a subpoena. The lack of notations of jurors failing to appear may be accounted for by adoption of the English practice of returning twice the number of jurors directed by the *venire* so as to insure the appearance of twelve. However, the schedule of sheriff's fees (120 pounds of tobacco for impaneling a jury) makes such adoption appear unlikely.²⁹

The laws contained no specific provision for challenge of jurors and, as far as the *Liber* shows, in no case were any jurors challenged. If a panel of only twelve jurors was returned, it seems likely that, in the event of a challenge, the court would have issued a writ of *tales* or, more likely, have employed *tales de circumstantibus* whereby it would order the sheriff to complete the panel from among the by-

26. Cf. in Charles County Court the trial by the court of William Sarjeant, presented for assault, and James Miller, presented for selling liquor on the Sabbath. *CCCR, Liber V, No. 1*, 210-11, 212. See, however, *His Majesty v. Johnson*, in the March 1700 court in Prince Georges County when the clerk of the indictments and defendant at their consent and request were permitted to produce their witnesses for the information of the court "according to the custome of this court here used and approved." *PGCJ, Liber B*, 27.

27. 13 *MA* 477, 479.

28. In a case in which the Provincial Court reversed a sentence of the Somerset County Court it was alleged as error, *inter alia*, that it did not appear whether the jurors were of the vicinage. *PCJ, Liber WT, No. 3*, 232-38.

29. 2 Hale, *The History of the Pleas of the Crown* 263 (1736). See also *Lewis v. His Majesty and Lydall* where, in seeking reversal by the Provincial Court of a June 1695 Talbot County Court conviction, it was urged as error, *inter alia*, that the names of the jurors were not noted, nor whether a *venire facias* issued and how the jury was impaneled. *PCJ, Liber IL*, 119.