next Provincial Court there to be tried. The clerks of the county courts were also enjoined to this end by statute. Also referred to earlier was the statutory provision for binding third offenders in theft cases over for trial in the Provincial Court. Since the Provincial Court was regarded as having the powers of King's Bench, it could probably award a *certiorari* to remove criminal proceedings pending before any county court. However, in the *Liber,* as seen earlier, the only criminal matters transferred to the Provincial Court arose from an indictment of Matthew Mockeboy for feloniously biting Thomas Orton's ear and from the refusal of the grand jury to find a true bill against the same offender for stealing. [40]

Conversely, from time to time the Governor and Council received complaints which might be referred to a county court or mayor's court and the person complained of summoned to attend. [41]

As has been noted, the various statutes of the province regulating appeals and writs of error made no provision for any appeal or writ of error in criminal matters. Very likely this reflected the fact that in England review of criminal causes by writ of error was rarely had. In any event no attempt was made to secure review by the Provincial Court in any of the criminal cases appearing in the *Liber.*

Was there any possibility of attainting the jury in a criminal prosecution in Maryland at the time? In March 1695/6 the governor, seemingly in connection with prosecutions under the Acts of Trade, ordered the attorneys practicing before the Provincial Court to return their opinions as to "what methods are to be taken for Attainting Juries in this province; whether the same can be done and in what case." [42]

Charles Carroll returned that:

> I am of Opinion that in as much as We have no particular Law of our own Countrey relating to such a matter and having a generall Law whereby it is Enacted that in whatsoever Case our own Law is silent, that in such Case the Law of England must be pursued, that therefore Attaints may be brought against Juries here, and that the Rule they must be brought by, is the same Rule whereby they are brought in England, which Rule is plainly set down in our Books, and would be too tedious to insert here, there having severall Alterations been made therein by severall Statutes. [43]

Other counsel agreed that attaint might be brought in the province but doubted, on the basis of English precedents, whether the writ was available to the King or an informer. [44] In any event there is no mention of attaint in the *Liber* and we have seen no evidence of its use in the province in our examination of other court records of the period. However, in November 1698 in connection with the prosecution of certain jurors in the Provincial Court who acquitted Gerard Sly of several criminal charges the House of Delegates requested that such jurors "may have freedome and liberty freely and clearly to give theire verdict without any Apprehensions of fear or Danger and be saved harmless for the same unless they may Justly by law be Attainted. . . ." [45]

40. *Infra* 1–2, 186–87, 519–20; 13 *MA* 477; 22 *id.* 511; *infra* 362–63, 460, 481–82.

41. 13 *MA* 334–35, 336–37.

42. 20 *id.* 396.

43. 20 *id.* 439.

44. 20 *id.* 441, 444. It was ultimately ordered that the question be referred to the Board of Trade for directions. 20 *id.* 438.

45. 22 *id.* 179–80, 182, 244–45. See also the reference to reversal by writ of error or attaint in the reasons in arrest of judgment in *His Majesty* v. *Clark* in the Provincial Court in August 1698. *PCJ, Liber IL,* 55. Kilty states flatly that attaint was not used in the province. *Op. cit. supra,* 18, 53.