

County, that all writs issuing out of the court should bear teste from the last adjournment of the court and with the day of issuance marked underneath.⁵

Once the writ had issued the next step was to have it served by the sheriff upon the defendant. The *capias*, which was returnable on the first day of the next court, apparently was required to be served at least eight days before the return day.⁶ In the event service was made, defendant arrested and bail below taken, the sheriff returned the writ endorsed "*Cepi*" and an entry to that effect was made in the *Liber* in a docket of writs returnable. In the event defendant could not be served or arrested, the writ was returned endorsed "*Non Est*" (*non est inventus*) and an appropriate entry made. In a few cases writs were endorsed "counter-manded", indicating that plaintiff had withdrawn or discontinued his action before the return was made. A few are found returned endorsed "tardy" (*tarde venit*), meaning that the writ came into the sheriff's hands too late for service before the return day. One or two were returned endorsed "*mortuus est*", defendant having died prior to service. One was endorsed "at the garrison", defendant being absent on military service; another "*cepi languedos [languidus]*", indicating that defendant was too ill to appear; another "*fugitt*", defendant having fled the jurisdiction. A few were endorsed "*Cepi agreed*" or *cepi con* (*cepi concordantur*), indicating that a settlement had been reached between the parties prior to the return day. In a few cases writs were returned endorsed "Custody"; this probably indicates that defendant had failed to put in bail below or bail to the sheriff to insure his appearance to answer the plaintiff at the return of the writ.⁷ No rules and orders have been found for Prince Georges County on the subject of bail below or bail to the sheriff or, for that matter, on special bail (bail to the action or bail above).⁸

Assuming that service had been made by the sheriff, the defendant, in most cases, either in his own person or more frequently by an attorney, would enter his appearance at the so-called "Appearance Court" and pray license to imparl to the next court. This was apparently usually granted as a matter of right, the same day

July 1699 the "Committee of Agreivances" of the House of Delegates represented it "as a great agreivance to the poor inhabitants of this province that noe Writts can be taken out of any of the Courts of this Province without any Attorneys Titeling to the Clerk" and prayed that the same might be remedied and addressed. 22 *MA* 406.

5. *CCCR, Liber S, No. 1*, 61. Printed writs were not used or required in Maryland until at least 1700. See Wroth, *A History of Printing in Colonial Maryland, 1686-1776*, 18-21 (1922) and *The St. Mary's Press: A New Chronology of American Printing*, 31 *MHM* 91 (1936).

6. The rules and orders for Charles County Court provided that the sheriff return all writs and process (except for summons for witnesses) before the sitting of the court on the first day of the term or by twelve o'clock at the latest, under penalty of 100 pounds of tobacco. The *Liber* indicates that the sheriff in Prince Georges County made his return on the first day of court but no penalty appears in any rule of court.

7. A 1692 act made void service of process on the Sabbath, a mustering day (on those persons bound to attend) or a day for election of Burgesses (on a person qualified to vote therein). 13 *MA* 476. This act was apparently repealed by implication in July 1699. 22 *id.* 558.

8. In Charles County Court the rules and orders provided: "That in all actions sued in this Court where the debt or damadges laid be or Exceede the summe of two thousand pounds of tobaccoe or the like value in money or other goods or Merchandizes the party plaintife may have speciall bayle to the same action if he requires it, or for a lesse summe against any person that is a non resident or unsettled or haveing noe Visible Estate to bee allowed at the discretion of the Court." *CCCR, Liber S, No. 1*, 62. There is some indication that a similar standard of 2,000 pounds of tobacco maintained in Prince Georges County. *Infra* 509. In Baltimore County Court the rules and orders provided: "Ordered that upon every Action Brought before this Court wherein Speciall Bayle is required the Plaintiff by himselfe or Attorney doe Insist upon such Bayle at the time when such Actions shall be called Before the Defendant thereunto shall have Entred his appearance Upon Neglect whereof Such Speciall Bayle Shall be voyde Notwithstanding the Tenor of the writt And the said Plaintiff left to the Common Current of the Law." *BCCP, Liber G, No. 1*, 552. The rules and orders in both Charles and Baltimore Counties appear to be concerned solely with special bail (bail above) and not with bail below or bail to the sheriff.