being given to the plaintiff. The *Liber* entries give the impression that appearance was entered and license to imparl was prayed and granted in open court. However, it seems very likely that the clerk of the court and the attorneys (and defendants appearing *in propria persona*) met together to call over the appearance docket and to enter all appearances where special bail was not required; any objections made on calling over the docket would be reserved for determination by the justices. [9] In several instances the sheriff, having made a return of *cepi corpus,* was amerced or held *in misericordia* when he failed to produce the body of the defendant on the return date, a practice consistent with that of England. [10] There is a scattering of cases in which when the defendant was in court at the calling over of the appearance docket, plaintiff applied for and was granted special bail to the action (on undertaking to satisfy judgment and costs or to render defendant into the custody of the sheriff) or, in default thereof, an order that defendant remain in the custody of the sheriff for lack of manucaptors or sureties. In other instances it appears that the prayer for special bail was made at the Appearance Court in the absence of the defendant. In such case the sheriff by virtue of a rule for special bail was authorized to take the defendant into custody until he could procure special bail according to the rule of the court. [11] If the device of fictitious common bail (John Doe and Richard Roe) was preserved in the province, we have seen no mention thereof.

In a few instances attorneys of the court commenced actions by bill "according to the Liberties and Priviledges" generally accorded attorneys in the various courts of the province. Or a bill might be filed against an attorney or justice of the court.

There may have been some exception to the right to imparl. From several cases it appears that if a copy of plaintiff's declaration was left with defendant at the time of service of the writ of *capias,* at least eight days before the court, then defendant was required to appear and answer and could not imparl. This was said to be "According to Act of Assembly in Such Cases made and provided" but no act containing such requirements has been found in the laws for the period. [12]

That it was not customary to serve the complaint with the *capias* appears from an order at the September 1696 court that the attorneys "Shall file all their Declerations with the Clarke of this Court within twenty dayes after the appearance Court for which the Said Declerations doth belong beginning from the Last day of the Said Appearance Court." [13] This twenty-day limitation may have been modeled after the rules and orders of Charles County Court which contained such a provision. However, such rules and orders also provided for the awarding of a nonsuit if the declaration was not filed within the time limited, "Unless upon Extraordinary necessity as sicknes or the like." [14]

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9. In Charles County Court the rules and orders provided: "That the Clarke and atturnyes of this Court Doe meete together sometime before the End of the first day of Every Court respectively and Call over the appeareance Dockett and Enter all appearances where speciall bayle is not required or where appearances only are accepted ... and what objections are made upon Calling over the Dockett to be markt Called over and determined by the Court the next day." *CCCR, Liber S, No. 1,* 61–62.

10. *Infra* 195, 289. For English practice see *Bengough v. Rossiter,* 2 H. Bl. 418, 434 (1795).

11. *Infra* 39, 49, 50, 53, 72–73, 172–73, 182, 193–94, 355, 481–82, 508–11, 513. The practice in Prince Georges County is believed to have resembled that of the Provincial Court as directed by statute. 22 *MA* 512. Presumably 23 Hen. VI, c. 10, requiring a sheriff to take sufficient bail, if tendered, was regarded as in force in the province. Kilty, *op. cit. supra,* 227–28; Alexander, *op. cit. supra,* 248–50. Apparently 4 & 5 Wm. & M., c. 4 was not regarded as extending to the province. Kilty, *op. cit. supra,* 100.

12. *Infra* 335, 479.

13. *Infra* 42.

14. *CCCR, Liber S, No. 1,* 62.