In addition, it should be noted that a 1696 act (An Act Relating to Bayle to be taken by the Sheriffs in actions of Trespass upon the Case) made it advisable to serve the declaration with the *capias* in actions of trespass on the case if substantial bail below was desired. This act provided that in all actions of trespass on the case where damages were laid in excess of four thousand pounds of tobacco a copy of the declaration expressing the true cause of action was to be sent with the writ and left with defendant so that friends of the party arrested who were willing to be bail for him might know the basis of the action. If such copy was not so delivered and left with defendant, the sheriff or any other officer having authority to serve such writ was not to require a bail bond of defendant above the sum of eight thousand pounds of tobacco, although damages were laid in the writ for a greater sum. From the recital in this act it appears that many litigious persons, commencing actions of trespass on the case out of spite and malice, rather than for just cause, did not set out the cause of the action in the "original writ" and yet laid damages to a vast sum in order to deter defendant's friends from becoming his bail—the cause of action not appearing. [15]

In a scattering of cases the defendant, at the "Appearance Court," instead of entering an appearance and imparling, appeared in person and in effect confessed judgment for the amount sued for.

Attachment

The manner of proceeding upon attachments during the period was regulated by a 1692 act entitled "An Act limitting the Extent of Attachments and providing what shall be levyed on Attachments and Executions." [16] The statute did not limit the use of attachment to any particular form of action and in practice it was used in both actions of debt and trespass on the case. Under this law, a statutory form of foreign attachment, no attachment was to issue out of any court before a writ or summons was made out. If the defendant was an inhabitant or resided within the province, and the sheriff returned such writ or summons *non est inventus*, a second writ or summons had to issue and be so returned before any attachment might issue. In the case of a person absent from the province, before any attachment might issue, it was necessary that a writ or summons be returned *non est inventus* by the sheriff; that a copy of the declaration or a short note expressing the true cause of action be left by plaintiff with defendant's attorney, or, if he had left none, at the house where defendant last resided or dwelt; and that plaintiff make such proof of his action as the respective courts should think fit. If these conditions were satisfied, it was lawful for the justices of the respective courts to award an attachment against the goods, chattels and credits of the absent defendant in the possession of any person or persons, including plaintiff.

The statute further provided that any attachment awarded contain a command to the sheriff, at the time of executing the attachment, to notify each person or persons in whose possession the goods, chattels and credits were attached to appear the day of the return of the attachment to show cause, if any, why such goods, chattels and credits should not be condemned and execution had thereupon as in other cases of recoveries or judgments given in courts of record. If upon the return day, the defendant or the garnishee in whose hands the goods, chattels and credits were attached did not appear to show cause to the contrary, the respective courts were to condemn the goods, chattels and credits so attached and award execution thereon to be had and made either by *capias ad satisfaciendum, scire facias,* or

15. 38 *MA* 94. This law was repealed in July 1699. 22 *id.* 558.
16. 13 *id.* 522.