fendant pleaded specially in bar that the sum alleged in the declaration had not been demanded of defendant before the action was brought in accordance with the above act and thereupon put himself upon the court, as did plaintiff. The plea in bar was not successful, however, since the court awarded judgment to the plaintiff including costs and charges. [40]

In most cases involving actions for the balance of an account, a copy of the account, proven according to law, was filed with the declaration. A 1692 law provided that an account sworn to by the plaintiff or a bill proved by his evidence before any justice of the Provincial Court or any two justices of any county court should be sufficient evidence to prove such debt in any county court. The party swearing or giving evidence to prove such debt was required at the same time to declare upon oath whether he knew of any payment or discount of any part of the debt so to be proven. A certificate to this effect, under the hand or hands of the justices before whom the account or debt was proven, was to be taken and received as sufficient proof of any such account or debt in any county court. [41]

Such accounts proved in accordance with law appear in the *Liber* bearing subscriptions such as that in *Brooke* v. *Ward*:

> March the 30th 1699/Then Came James Brooke and Made Oath before us that the above is a Just and true account and that he hath Received noe Part nor parcell thereof, Robert Tyler, Samuell Magruder. [42]

While the statute did not so provide, *Liber* entries show that it was also the practice to make oath to accounts in "open court", that is, before the justices sitting as a county court. In *Ivey and Arthur* v. *Chapman*, for example, the account bears the notation: "Prooved in open Court according to Law." [43]

Nothing in the laws or in numerous *Liber* entries indicates that plaintiff was required to prove his account in accordance with the statutory provisions prior to commencing suit. Presumably an account could always be proved at the trial stage of an action. However, there is one case that leaves some doubts. In *Mason* v. *Stimpson*, an action of trespass on the case for a balance of accounts, in the October 1699 court, defendant's attorney pleaded the general issue (*non assumpsit*) and specifically that the account specified in the declaration "was not proovd according to Law" and put himself upon the court, as did the plaintiff. The court thereupon gave judgment that plaintiff takes nothing by his writ and awarded defendant his costs and charges. [44]

The above 1692 act also provided that if any defendant upon trial could prove, either by any such certificate or other sufficient proof, that there was any sum of tobacco paid to plaintiff or his order, as part of the debt or account sued for, or any such sum due to defendant from plaintiff, the county court trying the action might cause such sum or sums to be discounted and give judgment against defendant only

40. 13 *MA* 530; 22 *id.* 528; *infra* 270–71.

41. 13 *MA* 447; 22 *id.* 528. It should also be noted that several acts for better administration of justice in the county courts of the province provided somewhat more broadly that "any bills, bonds, or other Specialties Book debts or Accounts" proved before two justices of the peace of any county or any one justice of the Provincial Court and "just Credit given to the same, and that the Ballance thereof is wholy due and unpaid", and so certified under the hand or hands of the justice or justices aforesaid, were to be sufficient evidence as well in the Provincial Court as in the county courts. 13 *id.* 521; 22 *id.* 463.

42. *Infra* 581.

43. *Infra* 572. See also the instance in which plaintiff's attorney also made oath in open court that he had heard defendant promise to pay the account. *Infra* 120.

44. *Infra* 576.