honest persons who upon just and good causes had recovered in the county courts were frustrated of the benefit of their writs upon writ of error and appeal brought before the judges of the Provincial Court who were sworn to judge according to the "Rules of Common Law." [53]

To remedy this situation it was provided that:

"[I]n all actions heretofore brought in any County Courts or hereafter to be brought in any County Courts where any plaintiff hath or shall recover or where any Diffendant hath or shall non suit the Plaintiff or otherwise by matter of fact barr the Plaintiff by and in the Judgment of the Justices of the County Courts where such causes was try'd if it appeires by the Record to be submitted to the Justices by consent of the Partys or their Attorneys in Court it shall be accepted deemed taken and reputed by the Justices of the Provinciall [Court] in a Writt of Error or appeal to avale and benefitt the plaintiff recovering to all intents and purposes as much as if the same matter as to the fact had been found tryed and returned by a jury of 12 men any Law Statute or Usage to the Contrary Notwithstanding."

In at least one county court the matter was regulated by rules and orders of the court. In Baltimore County the rules provided that no attorney for any defendant in any action in which a plea of *nil debet, non assumpsit* or not guilty was made "shall for tryall put themselves upon the Countrey and not upon the Court" under penalty of paying plaintiff his costs and then by rule of court having to amend his plea and proceed to trial. [54]

As indicated above, in a number of cases defendant pleaded the general issue and "put himself upon the Country", thus tendering a trial by jury. The acceptance or joining in such tender of an issue of fact is indicated in the *Liber* by a similiter in the form of "And the plaintiff also", signed by plaintiff's counsel. Once there was a joinder of issue the court presumably issued a writ of *venire facias juratores* directing the sheriff to return a panel of twelve jurors. The entries relating to jury trial are set forth in the *Liber* in substantially the same formalized language as in the case of jury trials in criminal causes noted above and cast little light on the mechanics of impaneling a jury. The names of the jurors are entered; one is designated as foreman. No evidence appears of any challenge. An oath was taken, but the form does not appear in the *Liber* or in the laws.

As to the trial stage, the *Liber* yields virtually no information. Probably the greatest insight into how a civil cause was tried in Prince Georges County at the time under consideration is afforded by one of the rules and orders of Charles County Court referred to above. This rule regulating trial procedure reads as follows:

That for Regulateing the Methodes of pleadeing and arguments at the barr wee the Justices Doe hereby promise that wee will not hold any arguments Either with our selves or the atturneyes or suitors while the Cause is in argument Unlesse it bee to ask any

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53. 38 *MA* 103. See also 19 *id.* 565. As to the several statutes of jeofailes in force in the province see the comments of Kilty on 14 Ed. III, St. 1, c. 6 ("The statutes of amendment and jeofails were so essential in the administration of justice, that there can be no doubt from that circumstance, and from what is known as to the practice, of their having extended to the province." *Op. cit supra* 216–17); 36 Ed. III, c. 15 ("it must have been . . . in some degree, in force in the province. . . ." *Op. cit. supra* 221); 11 Hen IV, c. 3 ("This statute appears to have been in force . . ." *Op. cit. supra* 225); 9 Hen. V., St. 1, c. 4 and 4 Hen. VI, c. 3 (*op. cit. supra* 226); 8 Hen. VI, c. 12 and c. 15 (extended in part. *Op. cit. supra* 227); 32 Hen. VIII, c. 30 (extended in part. *Op. cit. supra* 232); 18 Eliz. I, c. 14 (*op. cit. supra* 235); 27 Eliz. I, c. 5 (*op. cit. supra* 235); 21 Jac. I, c. 13 (*op. cit. supra* 237); 16 and 17 Car. II, c. 8 (sections 1 and 2 extended to the province. *Op. cit. supra* 239).

54. *BCCP, Liber G, No. 1*, 554.