

assembly of the Province, and orders for the prorogation of assemblies. As in England, these were issued by the Chancellor, as Keeper of the Great Seal, and belonged among his records. The examples in this record will explain themselves. Commissions of the Peace, that is, commissions to the Justices of the Peace, are found included. These, too, were issued by the Lord Chancellor in England, and comparison will show a close reproduction in Maryland of the elaborate form developed there, and settled finally by a conference of the royal judges in 1590. The charters of St. Mary's City were duly enrolled in the Chancellor's Office, and were therefore included in his records. Records of a number of indentures or deeds were inserted for preservation.

Pardons under the Great Seal, issued upon criminal convictions, were recorded together with the proceedings leading to the convictions, and upon which the Governor acted. Recitals in some of these proceedings may need explanation. All homicides by persons above infancy, except homicides in execution of sentences of courts, or in making arrests of outlaws or manifest thieves, were punishable, according to the theory still avowed, but as excuses for innocent, chance killings came to be recognized, pardons were given for these, and at the time of the making up of this record were always given, as of course. It was a roundabout method of admitting defences. Therefore proceedings and pardons in a number of cases of homicide by misadventure are found.

The "benefit of clergy" claimed by Pope Alvey and John Oliver after their convictions can be satisfactorily explained only historically. It resulted from the right allowed the church in the early middle ages to regulate and punish its own members. At first, it was only to those in priestly garb and tonsured that the exemption from common law punishment was conceded, but in time the test became that of ability to read which was confined almost altogether to the clergy; and, as this ability was extended by printing, laymen came within the letter of the exemption, and stayed within it. But in England the claimants to the benefit of clergy were restricted in some ways. After the middle of the fifteenth century a claimant was always required to come into a court and plead his exemption there; and a statute of Henry VII (chapter 13), compromised on the allowance to laymen by condemning those convicted to a burning with a hot iron in the brawn of the left thumb, and by denying the exemption after it had once been allowed. So it was that Pope Alvey in Maryland, after having once been allowed the benefit of clergy and burnt in the hand, was denied it on a second conviction, and put to the necessity of obtaining the pardon here recorded.

Of the judicial entries, a few may seem wrongly included in a Chancery record. Cases arising in county courts or in the Provincial Court, on minor criminal charges, were by writs of *certiorari* removed to the Court of Chancery for disposition there, presumably because unsatisfactory conditions required the removal, but removal before any trial seems to have been unusual in England. At that time however, the power of common law courts to grant new trials had fallen into disuse and parties feeling aggrieved by verdicts were resorting to the Court of Chancery for reconsideration. Writs of *certiorari* commanded the certification and transmittal of copies of records in cases removed.