

INTRODUCTION

The jurisdiction of the Provincial Court from 1675 onward continued unchanged. Criminal cases involving life or limb, and civil cases where the amount involved was 3000 pounds of tobacco or more, had to originate there. In smaller cases the Provincial Court and the county courts had equal jurisdiction, and the Provincial Court did not hesitate to hear and determine very minor cases. John Baker sued Arthur Carleton for one hundred and eight pounds of tobacco, and the Court heard the case, granted Baker what he had sued for, and also 579 pounds for costs of suit (*post*, p. 221). A hundred and eight pounds of tobacco was less than a pound sterling. The litigious innholder, Garret Vansweringen (he was plaintiff in twenty-seven cases), sued Benjamin Cloyster in *assumpsit* for 240 pounds of tobacco for liquors and accommodations, and recovered the 240 pounds and his costs (*post*, p. 223). Although the High Court of Chancery had been separated from the Provincial Court in 1669, the Provincial Court did not hesitate to exercise equity functions, especially in land cases (*post*, pp. 5-8, 49, 193, 288, 289).¹

In the years covered by this volume, 1675 to 1677, the justices of the Provincial Court were, as they had been, members of the Upper House, members of the Council, justices of the High Court of Chancery and of the Probate Court. Since they held office, not for a term, but at the pleasure of the Proprietary, they were subject to his domination. Understandably, it is sometimes hard to know in what capacity a man of many offices was acting. All of the justices were large landholders, and most of them held lucrative offices not connected with the Court. Governor Charles Calvert, who was also chief justice, became himself the Proprietary upon the death of his father Cecilius (*post*, p. 265). He remained in the province for some time and continued to serve as chief justice. When, in June 1676, he was about to leave for England, he appointed his infant son Cecil to be governor and chief justice of the Provincial Court; and as his deputy, to exercise the powers of the offices, he named Col. Jesse Wharton, who was already a justice and member of the Council, and already ill. In his instructions to Wharton, dated, like the commission, on June 16, 1676, he ordered him, if he found himself "sicke or in danger at any time of death" to "take care . . . to appoint Our trusty and welbeloved friend Thomas Notley Gentleman to Succeed" him; and he gave to Notley in that case all the powers he had given Wharton. On July 27, 1676, the ailing deputy governor, in pursuance of his instructions, did thus commission and empower Notley, and when, on August 1, 1676, the Council met, Wharton was dead and Notley took over as governor and as chief justice (*Archives*, XV, pp. 105-118). He was sworn in as deputy governor on July 27,

¹ The history of the Provincial Court is not treated here, for it has so often been told before. It may be sought in the works of Bozman, Thomas, Newbold, Steiner and Judge Carroll T. Bond, and in the introductions to past volumes of the *Archives*, especially volumes XLIX, LI, LIII and LVII.