

for the amount remaining due plaintiff, with costs of court. In cases in which such provision was invoked by a defendant the *Liber* indicates some uncertainty as to the mechanics of pleading and production by defendant of the account in bar. In *Bridges v. Chapman*, an action of trespass on the case for 634 pounds of tobacco due on an account, tried at the November 1696 court, defendant pleaded the general issue without any notice of set-off and put himself upon the court, as did plaintiff. At the trial defendant produced in bar of the action a copy of a Calvert County Court record, from which it appeared that in the March 1695 term of that court defendant had obtained a judgment against plaintiff for 1260 pounds of tobacco, and alleged that no part of this judgment had been satisfied. The court gave judgment that plaintiff had no cause of action but that the 634 pounds of tobacco was to be discounted out of the Calvert County Court judgment and the remainder was to be due defendant, together with 285 pounds of tobacco for his costs and charges.<sup>45</sup>

In *Jenkinson v. Poartwood*, in the February 1698/9 court, suit was brought on a bill obligatory, dated November 9, 1696, in the amount of 3000 pounds of tobacco. Defendant's counsel when called upon to answer produced a 1697 account against plaintiff in the amount of 2250 pounds of tobacco (bearing the notation "Proovd in open Court. Edward Willett Clerke") in bar of the debt sued on, pleaded the general issue and put himself upon the country, as did plaintiff. The jury returned a verdict that defendant owed plaintiff 750 pounds of tobacco, it appearing to them that the account pleaded in bar became due defendant since the bill specified in the declaration.<sup>46</sup> In *Burnam v. Moor*, at the same court, defendant pleaded the general issue in an action of trespass on the case and put himself on the court, the plaintiff likewise. The defendant in his proper person then producing an account against the plaintiff to bar the account sued for, it was thought convenient by the court that auditors be assigned to adjust accounts. Whether the account was produced at the pleading or trial stage is not clear from the *Liber*.<sup>47</sup>

In *Gallahah v. Wheat*, an action of trespass on the case on an account at the August 1699 court, defendant's attorney produced an account under oath "in Barr against" the debt sued for, apparently in conjunction with a plea of the general issue. Both parties putting themselves upon the court, the justices, "the Said John Wheat being Further Examined", rendered judgment for defendant. In *Charlett's Administrator v. Trottershall* in the same term defendant in his own person pleaded "that he ought not to be Charged with the whole Debt because he made oath to a Certain Part paid thereof" and produced his statement under oath of payments made to plaintiff or for his use. There is no indication in the *Liber* that defendant pleaded the general issue or put himself on the court. In any event, the court proceeded to give judgment for plaintiff, offsetting the amount sworn to as paid by defendant.<sup>48</sup>

In *Wilson's Executors v. Williams*, an action of trespass on the case based on an account, in the October 1699 term, defendant's counsel pleaded "that he oweth not the Said Plaintiffs the Said 409 pounds of Tobacco or any Part thereof as the Said Plaintiffes hath declared against him" and put himself on the court, as did plaintiff. Presumably this plea was intended as a plea of the general issue, although the language was substantially that of a plea of *nil debet*, the general issue in debt on a simple contract. The *Liber* then notes that "the Court haveing read and Fully

45. *Infra* 88-90.

46. *Infra* 443-44.

47. *Infra* 439-40.

48. *Infra* 529-31, 532-33.