

Quarterly Courts in Backcountry Counties of Colonial Virginia

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“A Court shall be held every Month, at the Court-house of each respective County of this Dominion.” -- George Webb, *The Office and Authority of a Justice of the Peace*¹

As of 1710, Virginia law required county courts to convene each month, a routine that with one notable exception persisted through the remainder of the colonial period.² From 1749 to 1752, Virginians experimented with quarterly courts on a limited basis; six backcountry counties were allowed to schedule court every three months instead of monthly. Backcountry petitioners were confident of the exception’s merits, but influential eastern political leaders disagreed. After a contentious debate over renewing the quarterly act, the House of Burgesses let it lapse and thereafter repeatedly refused renewal.

The quarterly court experiment offers fresh insights into mid-eighteenth-century Virginia. At one level, the court calendar issue was a political tussle between backcountry burgesses and Tidewater grandees. The opposition to quarterly courts likely also reflected an overt antipathy toward lawyers by conservative planters like Landon Carter. Most intriguingly, however, close scrutiny of lawsuits from the experimental period suggests that the fight over a quarterly schedule pitted the economic interests of lawyers practicing in backcountry courts against comparable interests of Tidewater merchants.

I. Virginia’s Limited Authorization of Quarterly Courts

The earliest petition for quarterly courts came from Fairfax County and received short shrift; in 17 March 1745/6, the Committee of Propositions and Grievances resolved to reject the proposal and the House tersely concurred. As recorded in the *Journal of the House of Burgesses*, the proposition called “for altering the County Courts, and establishing Quarterly Courts,” which can be read to have included all Virginia counties. Fairfax County court orders do not survive for this period, so it is impossible to tell whether the county’s petition referred only to Fairfax courts.³

¹ George Webb, *The Office and Authority of a Justice of the Peace* (Williamsburg, 1736) 107.

² “An act for establishing County Courts, and for regulating and establishing the proceedings therein,” October 1710, in *The Statutes at Large, Being a Collection of All the Laws of Virginia...*, ed. by William W. Hening (Richmond, 1823-1835) 3:504-07.

³ H.R. McIlwaine, ed., *Journals of the House of Burgesses of Virginia, 1742-1747, 1748-1749* (Richmond, 1909), 190. (Hereafter cited *JHB 1742-47, 1748-49.*)

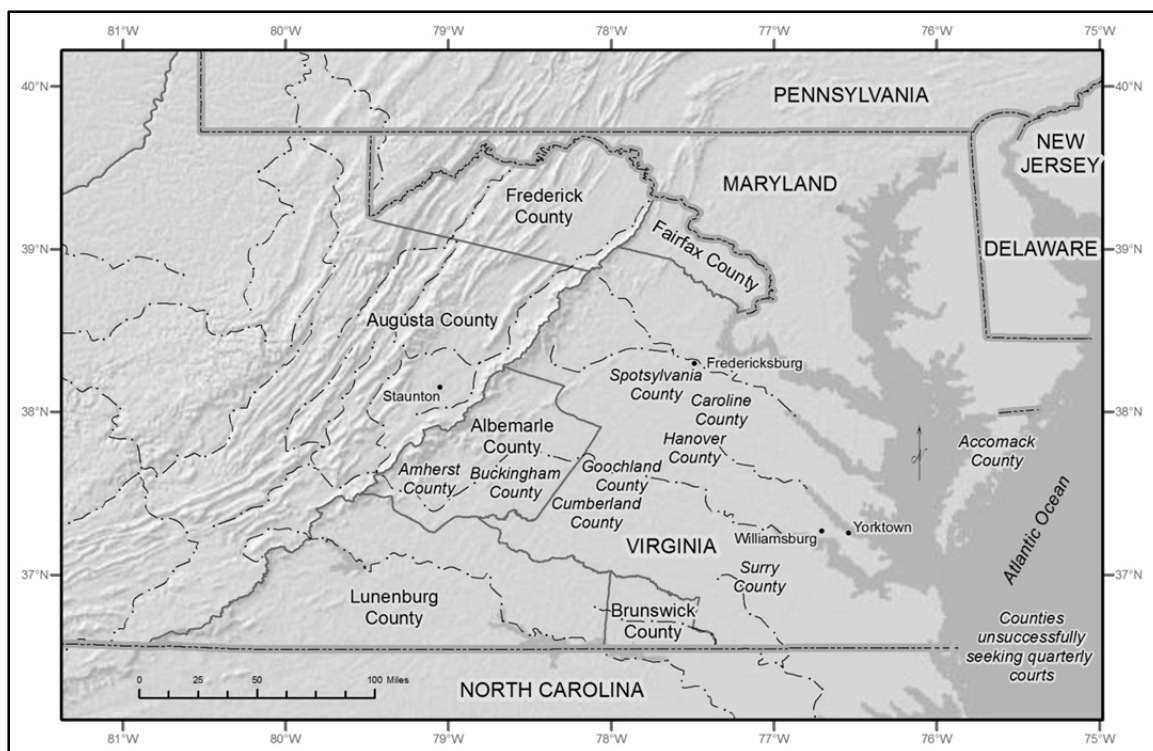


Figure 1. Backcountry Counties with Quarterly Courts, 1749-1752

Six Virginia counties were authorized to conduct courts quarterly instead of monthly in 1749; their borders are depicted as they existed in that year. Nine additional counties unsuccessfully petitioned for quarterly calendars in the late colonial period; their approximate locations are labeled in italics.

State boundaries: Minnesota Population Center. National Historical Geographic Information System, Minneapolis, MN: University of Minnesota, 2004. Available online from <http://www.nhgis.org>. Shaded relief: World Shaded Relief. Copyright:© 2009 ESRI, available online at: http://goto.arcgisonline.com/maps/World_Shaded_Relief. Rivers: National Atlas of the United States of America. Reston, Va.: U.S. Geological Survey, n.d. Available online from <http://nationalatlas.gov/atlasftp-na.html>. County boundaries for Albemarle, Augusta, Brunswick, Fairfax, Frederick and Lunenburg Counties and county labels for Accomack, Amherst, Buckingham, Caroline, Cumberland, Goochland, Hanover, Spotsylvania, and Surry Counties: DenBoer, Gordon, and Peggy Tuck Sinko. Virginia Historical Counties. Data Set. Laura Rico-Beck, digital comp. Atlas of Historical County Boundaries, ed. by John H. Long. Chicago: The Newberry Library, 2010. Available online from <http://www.newberry.org/ahcbp>. Augusta County border adjustment, 1754: Hening, *Statutes at Large* 6:376-379. Cartography by James W. Wilson, Assistant Professor, Department of Integrated Science and Technology, James Madison University.

The next known petition for quarterly courts was a request for an exemption, not a proposal for colony-wide change. On May 22, 1748, an Augusta County court of propositions and grievances approved “A proposition of the Magistrates and other inhabitants of Augusta for having quarterly Courts in this County” and certified it for presentation to the next General Assembly.⁴ Thereafter Augusta County magistrates behaved as if their request had been granted, convening on third Wednesdays in August and October 1748 and in February and May 1749.⁵

⁴ Augusta OB 2:44. Augusta County, Virginia, Order Book No. 2, 44, microfilm, Library of Virginia. (Hereafter cited Augusta County OB; court records from other counties cited below also are available on microfilm at the Library of Virginia.)

⁵ Augusta County OB 2:46, 65, 68, 103.

Petitioners from five other counties had the same idea but initially met little encouragement. Shortly after a newly elected House of Burgesses convened on 27 October 1748, the lawmakers rejected “the Proposition from the Counties of Hanover, Fairfax, and Frederick, for holding their Courts Quarterly, instead of Monthly.”⁶ For unknown reasons, the opposition began to soften, and a month later the Committee of Propositions and Grievances resolved that it found reasonable “the Propositions from the Counties of Goochland, Albemarle, and Augusta, for appointing the Courts of the said Counties respectively, to be held Quarterly, instead of Monthly.” On 29 November 1748, the House ordered an ad hoc committee to bring in a bill pursuant to that resolution.⁷

The ad hoc committee appears to have had a majority in favor of quarterly courts; of the eleven members, seven represented counties seeking quarterly courts and an eighth reportedly favored the measure (Table 1).⁸ Even so, the bill took time to craft. The House of Burgesses was in session for twenty-eight days between the order to bring in a bill and the committee’s report on 17 March 1748/9. A tepid reception then hinted that House leaders may have opposed the measure. The bill was tabled until its first reading on 22 March; a second reading was ordered, but another eighteen work days elapsed before the event. Upon hearing the second reading on Saturday, 15 April, it was ordered that the bill be “committed to a Committee of the whole House” on Monday, 17 April.⁹

Interest in the quarterly calendar seemingly intensified over Sunday. On 17 April, the House received and tabled “Two Petitions from sundry Inhabitants of the County of Brunswick...praying that Quarterly Courts may be established in that County.” Instead of considering the bill in a committee of the whole, Speaker John Robinson ordered the ad hoc committee’s discharge and assigned the bill to a new committee.¹⁰ The new committee amended the bill and reported the changes on 28 April, when the revisions were tabled.¹¹ Five days later the House considered and accepted the amendments. The bill was ordered engrossed, meaning that an official written version was prepared.¹² Part

⁶ Convened: *JHB 1742-47, 1748-49*, 255. Rejected: *ibid.*, 262, dtd 31 Oct. 1748. Court order books from Hanover and Fairfax Counties do not survive for this period. The Frederick County petition apparently was “Ordered to be Certified to the next Assembly” by a court for public claims, propositions, and grievances held on 16 June 1748; the court certified several propositions but did not note their contents. Frederick County Order Book 2:445-447.

⁷ *JHB 1742-47, 1748-49*, 307-308. As certified at a court for public claims, propositions, and grievances on 22 June 1748, “some of the Inhabitants of Goochland County” petitioned “for Quarterly instead of Monthly Courts to be held in the said County.” Goochland County Order Book 6:442. “The Petition of Sundry Inhabit[ants]” of Albemarle County, which was certified at a court for public claims, propositions, and grievances on 9 June 1748, likewise sought “Quarterly Courts.” Albemarle County Order Book 1744-1748, p. xv (in the back of the book). The Augusta County petition of 22 May 1748 is described above.

⁸ Counties favoring and their burgesses included: Albemarle (Joshua Fry and Charles Lynch), Augusta (John Wilson and John Madison), Frederick (Gabriel Jones), and Goochland (George Carrington and Archibald Cary). *JHB 1742-47, 1748-49*, 308. According to Landon Carter, Robert Jones of Surry County was part of the faction supporting quarterly courts in 1752. Jack P. Greene, ed., *The Diary of Colonel Landon Carter of Sabine Hall, 1752-1778* (Richmond, 1965), I:92.

⁹ *JHB 1742-47, 1748-49*, 341, 345, 364.

¹⁰ *Ibid.*, 366. The Brunswick County court of public claims, propositions, and grievances held on 5 Aug. 1748 received no petitions, nor is there a record of such petitions in county court orders from that court to the entry for 1 June 1749. Brunswick County Order Book 3:446-487.

¹¹ *Ibid.*, 381.

¹² *Ibid.*, 387, entry dtd 3 May 1749.

Table 1. Committees on the Quarterly Court Bill, 1749.

County	Draft Bill	Revise Bill
	29 Nov. 1748	17 Apr. 1749
Albemarle†	Joshua Fry Charles Lynch	Joshua Fry
Augusta†	John Wilson John Madison	
Brunswick†		Sterling Clack
Frederick†	Gabriel Jones	Gabriel Jones
Goochland	George Carrington Archibald Cary	
James City		Benjamin Waller*
Lunenburg†	Clement Reade	Clement Reade
Nansemond		Lemuel Reddick
Prince George	Richard Bland*	Richard Bland
Spottsylvania		William Waller
Stafford	Peter Hedgman	
Surry	Robert Jones	Robert Jones Augustine Claiborne
Williamsburg	Peyton Randolph	

* presumptive chair: delivered committee report

† county authorized by law to conduct quarterly courts, 1749-1752

Sources: *JHB 1742-47, 1748-49*, 308, 366.

of the process of engrossing a bill included establishing its official title, a step which revealed a significant alteration of the original act's scope. The measure now was styled "An Act, for altering the Method of holding Courts in the Counties of Brunswick, Lunenburg, Frederick, Albemarle, and Augusta," and the House passed it on 5 May. The committee to which Speaker Robinson added a member from Brunswick had added Brunswick County to the bill; the committee from which the speaker removed the Goochland members had cut Goochland from the bill. Frederick County's rejected petitioners of October 1748 received a permission previously withheld, and Lunenburg County's inhabitants received a

dispensation they never formally requested.¹³

Enacting the bill required Council's approval. On 6 May, "Mr Robert Jones, and the Members for Brunswick, Lunenburg, Frederick, Albemarle, and Augusta" delivered the bill to the Council, which agreed to an amended version on 8 May.¹⁴ The Council's amendment proved to be the addition of one more jurisdiction, Fairfax County. As enacted, the final version authorized six counties to hold quarterly courts instead of monthly.¹⁵

II. The Debate over Renewing Quarterly Courts

Virginians strongly disagreed over the merits of quarterly courts. Burgesses expressed those disputes while formulating the 1749 quarter sessions act by repeated amendments, by shuffling the membership of the ad hoc committee, and most importantly, by embedding a rescinding measure in the bill. The law was to be in force

¹³ *Ibid.*, 391. Lunenburg County's Order Books 1 and 2 contain no reference to quarterly courts before 1751.

¹⁴ Quote: *ibid.*, 391. H.R. McIlwaine, ed., *Legislative Journals of the Council of Colonial Virginia* (Richmond, 1918-19), 1050-52. (Hereafter cited *LJC*.)

¹⁵ *JHB 1742-47, 1748-49*, 405. Hening, *Statutes at Large* 6:201-210. Fairfax County court orders do not survive for this period, so it is unknown whether inhabitants petitioned for the change; perhaps they received it at the insistence of Council member William Fairfax. Council attendance: *LJC* 1045.

from 20 June 1749 until at least 10 June 1751, “and from thence to the end of the next session of Assembly.”¹⁶ Ultimately the next assembly refused to renew it.

Advocates cited two advantages to quarter sessions, both relating to geography. The 1749 act’s preamble emphasized that size mattered: “by reason of the large extent of the counties of Brunswick, Fairfax, Lunenburg, Frederick, Albemarle, and Augusta, the attendance of the inhabitants at monthly courts is grievous and burthensome.” Augusta County represented the extreme case: as of June 1749, the most remote patented real estate in the county lay in the New River Valley, over a hundred miles from the county seat at Staunton. Moreover, the law and its paperwork flowed in two directions: inhabitants journeyed to court, but court officers--especially the sheriffs, deputies, and constables delivering the writs that propelled due process--also journeyed to the homes of defendants. Vast backcountry jurisdictions reportedly made “it...impossible for the officers to execute writs, and other process...whereby great delays are occasioned in determining suits commenced and prosecuted in the said courts.”¹⁷

Inhabitants of the affected locales apparently approved the new schedule. In 1751, Lunenburg County magistrates “Ordered that application be Made at the Next General Assembly for the Continuation of the Quarterly Court Bill[,] it being found by Experience to be both useful & Convenient to the Inhabitants of the County.”¹⁸ Justices of the peace in Brunswick County likewise endorsed the quarter sessions act’s “many advantages,” asserting that the law rendered attendance at court “easie and commodious.” Their instructions to Brunswick’s burgesses included a directive to petition that the 1749 act be made perpetual, or at least continued.¹⁹ In 1752, residents of Albemarle County petitioned to make the quarterly schedule perpetual.²⁰ Only Fairfax County residents officially disagreed over the merits of the quarterly calendar. In February, the court certified two petitions to the assembly, one “praying monthly courts” and the other endorsing continuation of quarterly meetings.²¹

In the autumn of 1751, newly arrived Lieutenant Governor Robert Dinwiddie ordered elections and directed that the House of Burgesses convene on 27 February 1752. Within a week of the new General Assembly’s opening, the House took up the question of renewing the quarterly courts act. The Committee of Courts and Justice resolved that the law should be continued, and were ordered to bring in a bill accordingly. The same day, Goochland County petitioned to be included in the new bill.²² Five days later the Committee of Courts of Justice presented a continuation bill to the House, where it was read for the first time on 10 March 1752.

Goochland County’s interest in quarter sessions dated to its initial inclusion in the 1749 act, but by 1752 the quarter sessions issue was expanding beyond the counties involved in the original law. The inhabitants of Cumberland County presented petitions both for and against establishing quarterly courts, which were read in the House on 14

¹⁶ Quote: Hening, *Statutes at Large* 6:210.

¹⁷ Quotes in this and preceding paragraph: Hening, *Statutes at Large* 6:201.

¹⁸ Lunenburg County Order Book 2:406, entry dtd 3 Apr. 1751.

¹⁹ Brunswick County Order Book 4:80, entry dtd 26 Sept. 1751.

²⁰ H.R. McIlwaine, ed., *Journals of the House of Burgesses of Virginia, 1752-1755, 1756-1758* (Richmond, 1909), 52. (Hereafter cited *JHB 1752-55, 1756-58*.)

²¹ Fairfax County Order Book, 1749-1754, 182.

²² Entry dtd 5 Mar. 1752, *JHB 1752-55, 1756-58*, 17, 19.

March and referred to the Committee on Propositions and Grievances.²³ Six days later the committee reported that it found the request for quarterly courts reasonable and rejected the petition in opposition. The committee also rejected the Brunswick County petition to make quarterly courts perpetual, but found reasonable the county's request to adjust the dates of quarterly meetings. The bill was read for a second time and committed to the delegates from Albemarle, Augusta, Brunswick, Cumberland, Fairfax, Frederick, and Lunenburg, presumably to allow them to coordinate the dates of their various court sessions.²⁴

For all the initial smooth progress of the continuation act, clearly some burgesses opposed a quarterly schedule. The Committee of Propositions and Grievances resolved to reject "the Proposition from the County of Surry, for appointing the Court of that County to be held Quarterly," and the House endorsed the recommendation.²⁵ On 23 March, the committee likewise rejected new proposals from Accomack and Spotsylvania Counties to institute quarterly courts, and again the House concurred with the committee. On the same day, Goochland County once more was disappointed in its quest for quarter sessions.²⁶ Nor were skeptics willing to accommodate the original counties beyond temporarily continuing the permission to meet quarterly: petitions from Brunswick and Albemarle Counties to make the 1749 act perpetual were rejected by the Committee of Propositions and Grievances and by the House.²⁷

As more counties sought to institute quarterly schedules, the debate grew so contentious that burgesses began disputing even the renewal request from backcountry counties. On 4 April, the continuation bill stalled after the members to whom it had been committed reported their amendments. According to understated official records, the amendments "were again read, and disagreed to," and the bill was recommitted to the frontier members.²⁸ Richmond County burgess Landon Carter described the arguments in the House more vividly. The day included "Many and long debates about Quarterly Courts in Cumberland and Caroline [Counties]. I stedfastly withstood them," Carter recalled with palpable satisfaction, and "we threw it out."²⁹ Threw it, indeed: on 8 April,

²³ *ibid.*, 33. The origins of this petition are unclear; Cumberland County held no court of public claims, propositions, and grievances during this period.

²⁴ *JHB 1752-55, 1756-58*, 46-48.

²⁵ *ibid.*, 47. This petition had been certified to the next assembly at a Surry County court of public claims, propositions and grievances on 24 Feb. 1752. Surry County Order Book 1751-1753, 56-57.

²⁶ *JHB 1752-55, 1756-58*, 51, 53. On 30 Jan. 1752, "A Petition of sundry Freeholders & Inhabitants of the County of Accomack praying that Quarterly Courts might be held for the Said County" was certified at a court of public claims, propositions, and grievances. Accomack County Order Book 1744-1753, 573. At the same type of court in Spotsylvania County, "Zachary Lewis Gent[leman] in behalf of himself and others Exhibitted a proposition to have Quarterly Courts in this County (in the room of Monthly Courts) which was read and ordered to be Certified" to the next assembly on 25 Feb. 1752. Spotsylvania County Order Book 1749-55, 154. In Goochland County, "A Petition for holding quarterly Courts" was the first item considered at the 6 Feb. 1752 court of public claims, propositions, and grievances. One of the magistrates present, John Smith, also was a burgess for Goochland. Goochland County Order Book 7:117.

²⁷ *JHB 1752-55, 1756-58*, 47, 52. The Brunswick County court's instructions of 26 Sept. 1751 are described above. Albemarle County's court orders do not survive for this period.

²⁸ *JHB 1752-55, 1756-58*, 73.

²⁹ *Diary of Colonel Landon Carter*, I:91-92. As noted above, the Cumberland County orders for this period include no records of a court of public claims, propositions, and grievances. Caroline County conducted such a court on 13 Feb. 1752, but the proceedings include no mention of quarterly courts. One

the backcountry burgesses returned to the House with yet another set of amendments, but these were tabled, never to be reconsidered. The quarterly courts act consequently expired when the governor adjourned the Assembly on 20 April 1752.

III. The Stakes of the Quarterly Court Contest

Following their 1752 legislative defeat, proponents of calendar reform campaigned repeatedly for two decades to revive quarterly courts. On 21 November 1753, the House of Burgesses rejected a petition from Frederick County's magistrates requesting "that Quarterly Courts may be held in the said County."³⁰ Inhabitants of Albemarle County proposed relief for themselves and other frontier counties but were disappointed on 21 April 1757.³¹ Advocates from Buckingham and Cumberland Counties sought quarterly courts "in the several Counties of this Colony" in 1762, a petition that the Committee on Propositions and Grievances found reasonable. The House debated a bill accordingly, but in the end rejected it.³² In 1765, "sundry Freeholders and Inhabitants" of Amherst County petitioned so persuasively that the House passed a bill to allow quarterly courts in Albemarle, Amherst, Augusta, Buckingham, Chesterfield, and Cumberland Counties.³³ The Council, however, swiftly rejected the bill.³⁴ Undeterred, Amherst County inhabitants tried again in 1769. After much debate the burgesses passed a bill authorizing quarterly courts "in certain Counties," but the Council still refused acceptance.³⁵ In 1772, quarterly meetings were one part of a major overhaul of Virginia's legal system that burgesses drafted but did not pass.³⁶

of the magistrates sitting at this court, attorney Edmund Pendleton, was identified by Landon Carter as a proponent of quarter sessions during the 4 April debate. Caroline County Order Book 1746-1754, 295-296. Perhaps Carter mistook Pendleton's support of quarter sessions for a direct request to hold such courts in Caroline County, or perhaps Pendleton was attempting to include Caroline County in the bill without having received a petition from his constituents. Pendleton's surviving papers include no mention of the incident. David John Mays, ed., *The Letters and Papers of Edmund Pendleton, 1734-1803* (Charlottesville, 1967).

³⁰ *JHB 1752-55, 1756-58*, 130, 134. No petition has been found in Frederick County records.

³¹ *ibid.*, 428. Albemarle County court orders do not survive for this period.

³² John Pendleton Kennedy, ed., *Journals of the House of Burgesses of Virginia, 1761-1765* (Richmond, 1907), 107-108, 116-117, 141, 157, 159. (Hereafter cited *JHB 1761-65*.) Buckingham County court orders do not survive for this period. Cumberland County held a court of public claims, propositions, and grievances on 26 Feb. 1761, but no propositions were recorded at this session. Cumberland County Order Book 1758-62, 308.

³³ *JHB 1761-65*, 316, 328-29, 333-34, 347, 355; quote on 316. Amherst County court orders do not survive for this period.

³⁴ Entry dtd 27 May 1765, *LJC*, 1345.

³⁵ John Pendleton Kennedy, ed., *Journals of the House of Burgesses of Virginia, 1766-1769* (Richmond, 1906), 237, 251, 264, 276, 296, 303, 307, 309, 331, 337. Entry dtd 14 Dec. 1769, *LJC*, 1403. Amherst County court orders survive through September 1769 but include no court of public claims, propositions, and grievances during the previous year. Amherst County Order Book 1766-1769.

³⁶ Debate: John Pendleton Kennedy, ed., *Journals of the House of Burgesses of Virginia, 1770-1772* (Richmond, 1906), 266, 269, 270-71, 272, 275. For the six-page printed text of a bill "for the more easy and Speedy Administration of Justice", see British Public Records Office, Colonial Office 5/1350, ff. 77-80 (microfilm, Alderman Library, Univ. of Virginia); the quarterly courts portion is found on pp. 5-6. The rejected bill is discussed in A.G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810*, Studies in Legal History (Chapel Hill: Univ. of North Carolina Press, 1981), 153-155.

A variety of Virginia leaders argued for a quarter century over whether courts should be held monthly. Reformers consistently touted potential improvements for efficiency and convenience, but their assertions failed to persuade implacable foes in both House and Council. Few surviving documents offer much direct explication of the stakes in the argument, but some advantages for interested parties can be surmised from Virginia statutes and proposed modifications. In very large counties such as Augusta, magistrates residing at a greater distance from the courthouse benefited by spending considerably less time in transit to and from home. Similarly, non-resident lawyers practicing in multiple counties benefited by traveling one third as often to attend quarterly courts.

For at least one burgess opposing the quarterly schedule, the mere fact that lawyers wanted the change may have been reason enough to oppose it. “In the debate about the Quarterly Courts,” Landon Carter recorded triumphantly,

“Robert Jones...said I knew nothing of the Method of bringing a Suit to tryal and he did. I replied that it pleased me to find a Gentleman Pique himself on a little Mechanical knowledge, which to be sure all the forms of Pleadings [in lawsuits] must be allowed to be on; we could not imagine they [i.e., pleadings] were so eazy to be learned in the Spare hours that some people had behind Counters; That Attorneys were always lookt upon as so many Copyers and their knowledge only lay in knowing from whom to Copy Properly.”³⁷

To Carter and to other tradition-minded Virginia gentlemen, lawyers at courthouse bars and merchants at store counters occupied a less prestigious social niche than landed tobacco planters. Refusing to support a statute benefiting lawyers emphasized the distinction.

Carter’s image of a merchant reading law while standing at a store counter was evocative but potentially misleading: with regard to the scheduling of courts, lawyer and merchant interests did not coincide. Indeed, merchants behind counters may well have been the decisive defendants of monthly sessions. Certainly merchants favored any measures that would speed collections from their own debtors. This was especially true for non-resident merchants who relied on business partners or attorneys to collect overdue sums from debtors in other counties. Unfortunately for advocates of quarterly courts, chronological reform did not hasten debt collection for non-resident creditors. Such at least is indicated by data from Augusta County, in whose litigation records can be discerned the high economic stakes of calendar revision.

Proponents claimed that quarterly courts would bring debtors into court faster. According to Virginia practice for most of the colonial period, sheriffs officially notified defendants that their presence was required in court by delivering to them or to their residence a written summons called a *capias*, a document issued by the county clerk upon a plaintiff’s request. If sheriffs could not serve defendants with a *capias* before the next court session, then sheriffs reported their failure by endorsing the *capias* with an explanation for the failure. Most commonly in large counties, this endorsement was

³⁷ *Diary of Landon Carter*, I:93.

expressed as some variation of the phrase “not executed for want of time.” Less common delays included bad weather or service on the wrong person with the same name.

Sheriffs returned unexecuted writs to the clerk, but the summons could only be renewed on the county court’s order. The first renewal was called an alias *capias*, and if more renewals were required, each subsequent writ was called a *pluries capias*. Neither alias nor *pluries capias* could issue before a court re-convened; in large counties where courts met monthly, creditors therefore risked becoming trapped in an expensive procedural loop wherein magistrates repeatedly ordered writs that sheriffs never had time to deliver. The 1749 law establishing quarter sessions explicitly was intended to remedy situations in which “it is impossible for the officers to execute writs...whereby great delays are occasioned in determining suits.”³⁸

If proponents of quarter sessions were correct, then creditors theoretically faced

the most severe handicaps in Augusta County, which encompassed the farthest-flung settlements of colonial Virginia. In practice, however, the rate of service for *capiases* in suits on a writ of debt declined from 73.9 percent during monthly sessions to 67.7 percent in quarter sessions.³⁹ Rates of service for alias *capiases* in the two periods were almost identical, and the proportion of suits requiring *pluries capias* increased from 7.8 percent to 13.6 percent (Table 2). The shift to a quarterly schedule thus failed to make service of writs more efficient.

From the perspective of non-resident creditors, the Augusta County example was especially ominous. Proponents of quarterly courts had asserted their calendar was more efficient, but in Augusta County they were correct only in a limited sense: both the median and the average number of sessions required to resolve a suit without recourse to a jury fell after the switch to quarterly meetings (Table 3). As measured by elapsed time,

Table 2. Effects of Calendar Revision on Rates of Service for Writs of Debt in Augusta County

	Monthly sessions		Quarterly sessions	
	N=153		N=331	
	n	%N	n	%N
Capias served.....	113	73.9	224	67.7
Alias capias served.....	28	18.3	62	18.7
1st pluries capias served.....	7	4.6	20	6.0
2nd pluries capias served.....	4	2.6	16	4.8
3rd pluries capias served.....	1	0.7	4	1.2
4th pluries capias served.....	--	--	--	--
5th pluries capias served.....	--	--	4	1.2
6th pluries capias served.....	--	--	1	0.3

Data for monthly sessions include all civil suits initiated on a writ of debt through the May 1748 session.

Data for quarterly sessions include all civil suits initiated on a writ of debt from August 1748 through May 1752.

Qui tam actions on a writ of debt by county and parish officials are excluded as irrelevant to a study of civil litigation.

³⁸ “An Act for altering the method of holding Courts in the Counties of Brunswick, Fairfax, Lunenburg, Frederick, Albemarle, and Augusta,” Hening, *Statutes at Large*, 6:201.

³⁹ This calculation is based on suits concluded by the end of Augusta County’s May 1748 court, after which the magistrates initiated a quarterly schedule.

however, the change had alarming implications for creditors. The median number of days required to resolve suits with no juries held steady at 104.0, but the average increased from 125.8 to 216.9 days (72.4 percent).

Table 3. Effects of Augusta County Court Calendar Revision on Debt Suits Brought by Non-Residents

	Resolution without a jury		Judgment in default, jury on writ of enquiry		Verdict by jury in trials of the issue		
	Monthly 1746-48 ^a N=32	Quarterly 1748-52 ^b N=66	Monthly 1746-48 ^a N=3	Quarterly 1748-52 ^b N=4	Monthly 1746-48 ^a N=6	Quarterly 1748-52 ^b N=0	Quarterly 1748-55 ^c N=4
Sessions to complete							
Maximum	18	11	6	12	12	--	8
Median	3.0	2.0	4	4.5	7.0	--	8.0
Average	3.8	3.3	4.3	6.0	7.3	--	7.5
Standard Dev.	3.3	2.8	1.5	4.1	2.7	--	1.0
Days to complete							
Maximum	764	928	155	1,017	573	--	659
Median	104.0	104.0	117	325.0	287.0	--	628.0
Average	125.8	216.9	120.7	460.5	318.8	--	598.5
Standard Dev.	144.9	251.8	32.7	139.7	379.2	--	70.8

^a Includes all suits on a writ of debt brought by non-residents and resolved by the end of the May 1748 court.

^b Includes all suits on a writ of debt brought by non-residents after Augusta's unauthorized switch to quarter sessions at May 1748 court and resolved by the end of the last statutorily authorized court of quarter sessions in May 1752.

^c Includes all suits on a writ of debt brought by non-residents after Augusta's unauthorized switch to quarter sessions at May 1748 court and resolved by the end of the unauthorized quarterly court of May 1755, just before the onset of the Seven Years' War.

The shift to quarter sessions lengthened even more dramatically the amount of time required for debt suits involving juries. These were rare--a large majority of suits on writs of debt were resolved without recourse to juries--but certain circumstances required them. For example, sometimes plaintiffs received judgment in default after defendants declined to appear in court. In a minority of cases ending in judgment by default, a jury of enquiry was summoned to settle a factual question, such as the value in Virginia money of a debt incurred in Pennsylvania money. Juries also were summoned for trial of the issue when defendants contested the plaintiff's allegations. The two types of juries were rare but extremely important for all debt suits, including the ones resolved without a jury. As one modern legal study puts it, "[t]he overwhelming majority of civil cases

settle before trial. Many settle before they are filed. The rights that parties have at trial, however, determine the terms of settlement.”⁴⁰

The shift to quarterly courts transformed the rights of parties at jury trials by greatly increasing the time required to conclude a case (Table 3). Presumably the delays were acceptable to the frontier residents who repeatedly petitioned for quarterly schedules. Non-resident plaintiffs, however, were hit hard. Under the monthly system, suits involving juries on writs of enquiry took a median of 117 days; after the switch to quarterly courts, cases with juries on writs of enquiry took a median of 325.0 days to complete, an increase of 177.8 percent. The average time likewise soared from 120.7 to 460.5 days (281.5 percent). Trials of the issue consumed so much time under the quarterly system that none were completed by non-residents during the statutory authorization of quarterly courts.⁴¹ The quarterly court schedule thus created a powerful economic incentive for debtors--especially those owing large sums--to decline early settlement and to seek a much slower trial by jury.

The litigation records of a frontier county suggest that Virginia’s late colonial struggle over courts of quarter sessions pitted the economic interests of lawyers against those of merchants. With the help of social conservatives such as Landon Carter, merchants prevailed, and the backcountry experiment of 1749 to 1752 never was repeated. In the end, however, lawyers got the quarterly schedule they wanted in Augusta County.

When the quarter sessions act expired in April 1752, at least four of the six counties dutifully resumed monthly sessions.⁴² By contrast, in Augusta County, magistrates observed the law’s expiration only in passing. The court met in May and June according to a new monthly schedule but then settled into an unauthorized quarterly routine, a pattern that persisted with only minor variations through the colonial period.⁴³ Such intransigence could not have gone unnoticed at the highest levels of colonial government: Augusta County plaintiffs during the first three years of this non-compliant phase included Speaker of the House of Burgesses John Robinson, Councilors William Beverley and John Lewis, Culpeper County burgess John Spotswood, and at least thirty non-resident merchants.⁴⁴ For reasons that are as yet unclear, Virginia leaders ignored Augusta County’s independent court schedule.

⁴⁰ Douglas G. Baird, Robert H. Gertner, and Randal C. Picker, *Game Theory and the Law* (Cambridge, Ma., 1994), 245.

⁴¹ As noted in the last column of Table 3, four suits on a writ of debt that were initiated during the authorized quarterly courts period resulted in a trial of the issue by jury before the onset of the Seven Years’ War disrupted frontier routines in June 1755. The median days required to conclude these four cases was 628.0, an increase of 118.8 percent over the 287.0-day median for monthly sessions.

⁴² Brunswick County OB 4:174, 206, 257. Fairfax County OB 1749-1754, 191, 205, 212. Frederick County OB 4:139, 215, 216. Lunenburg County OB 2½:33, 43, 64. Albemarle County’s court orders do not survive for this period.

⁴³ May and June 1752: Augusta County OB 3:243, 265. Aug. 1752 through March 1775: *ibid.* 3:309--16:70.

⁴⁴ Robinson & Lewis as executors of John Robinson, Sr. (14 suits): *ibid.*, 3:397, 403, 423, 424, 427, 428, 434, 447, 4:39, 96, 387. Lewis by himself (1 suit): *ibid.*, 4:144. Beverley (7 suits): *ibid.*, 3:389, 390, 341, 4:34, 151, 184, 227. Spotswood (1 suit): *ibid.*, 2:611. Merchants: *ibid.*, 3:309-4:462, *passim*.