

appointed, the said court shall have cognizance of the affair, and shall determine according to the testimony produced on both sides.

The notice required by two preceding sections distinguished from that required by this section. Issues will not be granted on question of whether notice prescribed by this section has been given, after action of orphans' court thereon. Time within which a petition raising question of whether the requisite notice has been given must be filed. *Stanley v. Safe Deposit Co.*, 88 Md. 405. And see *Pacy v. Cosgrove*, 113 Md. 320.

If a caveat has already been filed orphans' court cannot probate will until the caveat is disposed of. The prescribed notice must also appear to have been given. *Keene v. Corse*, 80 Md. 22.

When a decision is made between opposing parties, it is a judgment *in rem* conclusively establishing validity *vel non* of will. The court has no power to pass on the probate of will until it is presented for that purpose. *Emmert v. Stouffer*, 64 Md. 553; *Pleasants v. McKenney*, 109 Md. 277; *Worthington v. Gittings*, 56 Md. 547.

Where a will is presented with a petition stating that it is not will of deceased, and only testimony on behalf of those assailing the will is heard, those in favor of will being given no opportunity to be heard, orphans' court is without jurisdiction to decide question of probate. *Emmert v. Stouffer*, 64 Md. 553.

A question as to whether notice required by this section has been given cannot be raised for first time in court of appeals after argument there. *Stanley v. Safe Deposit Co.*, 87 Md. 458.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.
See notes to secs. 348, 353 and 354.

An. Code, sec. 346. 1904, sec. 339. 1888, sec. 330. 1798, ch. 101, sub-ch. 2, secs. 9, 10.

356. If any person whatever shall enter a caveat against such will or codicil, either before or after it shall be exhibited to the register of wills or orphans' court, the said caveat shall be decided by the court. If any person shall enter a caveat against any will or codicil of which probate shall have been taken by the register as aforesaid, no letters testamentary shall be granted until a determination shall be had in the orphans' court.

This section gives orphans' court jurisdiction to decide caveats, and when issues have been properly submitted and fairly passed upon, decision of the court is final and binding unless reversed. This is equally true where issues are passed upon by orphans' court as where they are passed upon by a jury. *McDaniel v. McDaniel*, 86 Md. 626. And see *Offutt v. Gott*, 12 G. & J. 386.

The caveat of a will in the orphans' court distinguished from a caveat in equity against a patent. *Cunningham v. Browning*, 1 Bl. 324.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

As to issues, see secs. 262 and 264 and notes.

See notes to secs. 348 and 354.

An. Code, sec. 347. 1904, sec. 340. 1888, sec. 331. 1798, ch. 101, sub-ch. 2, sec. 12. 1890, ch. 416.

357. Every executor or other person exhibiting a will shall be examined on oath whether or not he knows of any other will or codicil, and in what manner the will or codicil exhibited came into his hands.

This section demands evidence (1) as to whether will exhibited is last will of testator and (2) as to its custody. The first point is jurisdictional to the extent that court must be satisfied as to it before probate; the probate would not be affected, however, by failure to examine person exhibiting will as provided by this section, if court has secured the information from other sources. This section construed in connection with secs. 331, 332, 360 and 363. Intent of this section. Probate not procured by fraud; failure to notify brother, etc. *Snyder v. Snyder*, 142 Md. 294.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to secs. 348 and 354.