

## LEGAL BACKGROUND OF THE PREROGATIVE COURT

Throughout the colonial period the General Assembly frequently concerned itself with probate matters, especially the protection of orphans' estates. In 1681, an Act entitled "An act for the better Adm̄stracōn of Justice in probate of Wills, granting Adm̄stracōns Recovery of Legacy & secureing fillial porcōns" was passed.<sup>22</sup> This Act may well be called the basic law of the Prerogative Court; for, with one important exception, none of the laws passed subsequently made any great change either in the organization or procedure of the Court. It required the Judge or Commissary General to "hold his court once in Two Months att the Least or oftner as the Case shall Requier." He was to proceed in all testamentary causes according to the Laws of England if pleaded before him except "in such cases as shall in this Act be Limited or shall heereafter bee Limited by Act of Assembly of this Province, as utterly impracticable in this Province." It was made lawful for the Judge to prove "any Last Will in this Province even though itt Concerne Title to Land any Law useage or Custome of the Kingdome of England to the Contrary Notwithstanding." Executors and administrators were to account for the estate within twelve months after administration was committed. The care of orphans' estates and choice of guardians was left to the county courts, but very elaborate and detailed regulations were prescribed by the law; the theory being that local authorities, being better acquainted with the individuals concerned and in the same locality where the estate was, could do a better job of protecting the interests of the orphans. Finally the right of appeal from the decision of the Commissary General which had<sup>23</sup> been established in the commission issued to Philip Calvert in 1672, was confirmed, provided that the appellant enter his appeal before the Commissary within 15 days of the sentence and within 15 more days petition the Lord Proprietary or his Lieutenant to examine or appoint someone to examine the sentence of the Commissary. This law was renewed by acts passed in 1692,<sup>23</sup> 1699,<sup>24</sup> and 1715<sup>25</sup> which contained substantially the same provisions, but did vary in detail.

<sup>22</sup> *Arch. Md.*, VII, 195.

<sup>23</sup> *Ibid.*, XIII, 430.

<sup>24</sup> *Ibid.*, XXII, 533.

<sup>25</sup> *Ibid.*, XXX, 331.