

and other instruments were to be issued in the name of the Lord Proprietary and not in the name of the King. It was further provided that all civil causes in any other court in which any judge (unless he be the Governor) of that court was a party, should be tried in the Court of Chancery (*Arch. Md.*, i, 49-50).

Although the act for erecting a Court of Chancery failed of passage for the reason just given, it seems certain that the provisions of the bill were an expression of the lines along which equity jurisdiction was then developing in the Province and that it continued to develop along these same lines.

At the session of July, 1642, however, "An Act for Rule of Judicature" was passed. This act, which did not go into details of court organization, declared as to equity that "right and just shall be determined according to equity and good conscience \* \* \* according to the law of the Province, or in defect of certain Law then they may be determined according to the best discretion of the Judge or Judges judging, as near as Conveniently may be to the laudable law or usage of England" (*Arch. Md.*, i, 147). It has been said by Bernard C. Steiner that the distinction between law and equity was recognized in Maryland from the early settlement in a way that was not to be found in the other colonies (*Maryland's First Courts, Amer. Hist. Assoc. Report 1901*, p. 227).

Although the jurisdiction of the court was similar to that of the High Court of Chancery of England, the organization and form of the Maryland court differed widely from the English court as we find it at the time of the founding of Maryland. While all writs were issued under the seal of the Chancellor in the name of the Proprietary, and the authority of the Chancellor as Keeper of the Great Seal was similar to that of the English Chancellor, the Maryland Court of Chancery at this period in its judicial capacity was not a one-man court where causes were heard and decided by the Chancellor as in the English court. Nor need we concern ourselves here with the view held by some, that the English Chancery should not be considered a one-man court because of the fact that the Chancellor regularly referred cases before him for advice to the various masters in Chancery, of which there were twelve attached to the court, and at least one of whom, the Master of the Rolls, had definite, although limited, judicial functions. The general conception of the court, however, certainly was, that the Chancery was the court of the Chancellor alone. The Chancellor of Maryland during the seventeenth century, unless he was at the same time Governor, did not even preside in the Court of Chancery except in the Governor's absence, and his vote counted for no more than did that of any other associate member of the court.

To find the English prototype of the Maryland Court of Chancery as it appears in the seventeenth century we must go back to the medieval Chancery Court of England when it was merely a committee of the King's Privy Council, and at a somewhat later date to the Court of Chancery of the Palatinate of Durham, as it was found at the beginning of the sixteenth century. It will be recalled that the Maryland Charter gave to the Proprietary all the powers then exercised, or which ever had been exercised, by the Bishop of Durham. On account of its exposed position on the borders of Scotland and its distance from London, the broad powers of a count palatine had been conferred upon the