

A proceeding on what was called a writ of *audita querela* would seem to have belonged to the common law courts. That was a writ, or order, surviving from the fourteenth century when what were later distinguished as the common law courts granted equitable as well as common law remedies, and it was a provision for exceptional demands of justice not taken into account by the general and ordinarily sufficient rules, a provision of the nature of those by which any body of rules devised by men must be supplemented. When a defendant against whom a judgment had been entered, and against whom execution might be issued, came forward with a complaint of circumstances which would render it intolerable that the judgment and execution should be allowed, the common law court in which the judgment had been entered might issue the writ of *audita querela*, so called from its recital in the Latin that the complaint had been heard, and ordering the parties to come before the court that a determination might be had. It was the equivalent of an original suit, and the parties would appear and plead after the issue of the writ. In this instance an attachment had been sued out against a defendant alleged to have been a non-resident or an absconding debtor, and his goods had been condemned to pay the claim; and he contended that the attachment and condemnation were improper. Under the practice customary in England and in Maryland, both, a defendant was allowed a year and a day after condemnation (one of the scattered fragments of an ancient limitation), to come in and present reasons why the attachment should be abrogated, and in this instance two years had elapsed. The Court allowed an *audita querela*. It is in Maryland as in England an obsolete proceeding, a mere motion being sufficient to accomplish the purpose now.

The proceedings of a Court of Delegates here included were not at all connected with the Chancery Court or the Chancellor as such; they belonged to a distinct court. No ecclesiastical courts were set up in the Province, and the work of probate of wills and administration of the estates of deceased owners, which was committed to the ecclesiastical courts in England, was here managed by the Provincial Court or a justice specially assigned, until 1673, when a separate "Prerogative Court" was inaugurated for it. But whenever during the period of this record, or later in the provincial period, there was a demand for review of a decision in a case of this sort, a special court of justices delegated for the purpose, usually the ordinary justices of the Provincial Court, was commissioned; and it was called by the name of the court regularly commissioned in England for the same purpose, a Court of Delegates. It was the name used there for courts commissioned to hear appeals in admiralty cases, too. As such an occasional court would have no office of its own, there was no repository for its record except that of the office of the clerk who served it. Consequently we find complete records of Courts of Delegates included among those of other courts. This would seem to be the explanation of the inclusion of the whole of the record of a Court of Delegates here. Records of Courts of Delegates from 1696 to the time of the American Revolution are found among the papers of the Governor and Council sitting as the Court of Appeals of that period.