

them of the common law.”¹ It must be borne in mind that the members of the House of Lords were in the main laymen, and that until the nineteenth century the lay members participated in judicial decisions. In the state of New York, until 1846, the members of the state senate sat with the judges on appeals. In Maryland, lawyers were not by law required on any courts until 1776,² none were required on the county courts until 1790,³ when a professional chief judge was required, and the courts of first instance in matters of probate and the administration of the estates of deceased owners have never been made subject to the requirement. Dependence upon participation of non-professional judges was for centuries a conspicuous characteristic of justice throughout the English countryside.

8. THE ATTORNEYS

With respect to the attorneys practicing before the early Maryland courts, the references in the records have left some obscurity and caused some confusion, chiefly because of a common practice of parties to litigation, especially in the first two or three decades after the settlement, to appoint agents or attorneys in fact to attend court for them, and to take measures for the protection of their interests.⁴ In a statement of grievances drawn up by the lower house in 1669⁵ it was explained that the aged and impotent not able to travel, and litigants absent beyond seas, must have attorneys; but disability and distance seem not to have furnished the only explanations. In 1714, petitions to the upper house on behalf of merchants protested that distribution of the business of the central provincial court among the twelve county courts necessitated the employment of twelve agents, one in each county, to collect debts.⁶ These agents were customarily referred to as attorneys, and the parties represented were noted as appearing and acting by attorneys, when only attorneys in fact were meant; and this has led to statements that there was a large number of attorneys at law in the province in its earliest years, including among them the first woman attorney at law in America. Survivals of the practice are found in records of the late eighteenth century.⁷ Before acting, these attorneys presented credentials from their principals, and the form used sometimes included an authoriza-

¹ Hale, *Original Institutions, Power and Jurisdiction of Parliaments* (London, 1707), p. 51; Blackstone, *Comm.*, III, 56.

² *Constitution and Form of Government of Maryland* (1776), sec. Ixi. But under the original charters of St. Mary's (1667) and Annapolis (1708) the recorders were required to be lawyers.

³ Act 1790, ch. 33.

⁴ *Archives*, IV, 7, 9, 39; *ibid.*, XLI, 233; *ibid.*, XLIX, xvi, 44, 45, 47, 54, 59, 63, 200. Compare recitals in the bond of Macnemara, *post*, p. 607.

⁵ *Ibid.*, II, 175.

⁶ Mereness, *op. cit.*, p. 240.

⁷ *Calvert v. Eden*, 2 Harris & McHenry, 365.