The chancery appeals, it will be observed, were in the form of petitions, to be answered by the appellee; and the higher court, in Maryland as in England, determined the questions of fact in chancery cases as well as those of law. Allowance of this appeal again involved review by judges of their own decisions, for the governor, who served as chancellor down to the year 1776, was the presiding judge of the appellate court and sat on chancery appeals until the middle of the eighteenth century; and at times his associates in the work of the chancery court were also members of the council. In the case of *Charles Carroll v. Thomas Wells,*[1] in this record, for instance, it appears that in the chancery court below sat Governor Hart, with Holland, Young, Hall, Addison, Lowe, and Ward as associates, and on the hearing of the appeal from their decision sat Governor Hart, Holland, Young, Lloyd, Addison, Tilghman, Lowe, and Bordley.

In decisions in cases of all kinds the governor and the members of the council had equal votes, and that it should be so will be found decided in the case of *Miles Burroughs v. Tench, Governor Copley's Administrator.*[2] When Dent questioned whether in case of a division of an even number of judges the governor did not have a "swaying voice," the governor answered that he thought not. But there was precedent for Dent's view, even in Maryland. An act of 1642,[3] concerning judges for the provincial court and the county courts, had provided that "if the votes of the judges be aequall, that judgment shall be entered w^{ch} is given by the Chiefe Judge in Commission." In the act of 1718,[4] on the other hand, it was provided that on appeals from chancery decrees each member should have a full voice.

Upon a reversal there was no new trial given in the same suit; if the plaintiff wished to press his claim he must then have begun a new suit in the trial court, and it was because of the necessity of bringing this second suit within the period of limitations, if it should be brought at all, that plaintiffs in some of the cases resisted continuances of the appeals.

The administration of justice depicted in this volume exhibits the virtues and defects of the time. There was still a freedom and adaptability not permitted later, as in the case of *Adams v. Caldwell,*[5] in which, the Court of Appeals, finding a bill to set aside fraudulent conveyances to be insufficient, treated the proceeding as one to perpetuate the testimony taken in it; and in *Burroughs v. Copley's Administrator,*[6] in which, suspending the review meanwhile, it ordered the provincial court to take the verdict of a jury on a question of fact left open, and to certify the finding to the Court of Appeals for its resumption of consideration of the case. In a case of *Proprietary v. King,*[7] in 1732, the provincial court, reviewing an assize court conviction of murder, found error in a refusal to instruct the jury to render a verdict of

1 *Post,* pp. 235, 236
2 *Post,* p. 54.
3 Chs. 3 and 22, *Archives,* I, 210.
4 Ch. 10, *ibid.,* XXXVI, 524.
5 *Post,* p. 581.
6 *Post,* p. 26.
7 1 Harris & McHenry, 83.