

The probate by witnesses in the Ecclesiastical Court is conclusive as to the personal estate; (c) but it does not in any degree authenticate the will in so far as it may have made any disposition of real estate; and, consequently, if its validity be questioned as to that, it will be necessary to prove it as fully as if nothing had previously been done. It is a privilege of the heir to have an issue *devisavit vel non* to try the validity of a will; but this privilege may be rejected, as the Chancellor is not obliged, in any case, to send out an issue. (d)

But the Ecclesiastical Court having obtained legal possession of the will, and having become pledged for its safety, in respect to the personal estate, of which it had made some disposition, that court cannot, therefore, allow it to be delivered exclusively into the hands of any one who may claim under it, lest the interests of others might be put in peril; and yet, as regards the realty, it cannot be legally proved unless the original itself be brought before the court and jury, who alone are competent to determine its validity. To remove this difficulty and to prevent injustice, the Court of Chancery has assumed a jurisdiction, upon petition, to order the original will to be delivered by the Register of the Ecclesiastical Court to the petitioner, on his giving bond for its safe return, for the purpose of its being brought before the proper tribunal; or even sent abroad to be exhibited to witnesses who can testify respecting it, but who cannot be brought before the court to whom the question of its authenticity is to be submitted. (e)

In Maryland also, it is the duty of the executor to have the will proved; and, for that purpose, to have it lodged with the Register of Wills of the proper county. But now, as under the Provincial government, there seems to have been but one form of probate, and that is, by the oath of the executor, and also by the testimony of witnesses; and not merely in the one or the other of those forms as in England. (f) After the probate has been thus made here, the will is recorded; and the original will is, in all cases, held for safe custody by the register, as is done by the English Ecclesiastical Court. This practice or common law of Maryland by which

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(c) *Toller Executors*, 77.—(d) *Tucker v. Sanger*, 6 Exch. Rep. 49; *Attorney-General v. Burrige*, 6 Exch. Rep. 353.—(e) *Frederick v. Aynscombe*, 1 Atk. 627; *Morse v. Roach*, 1 Dick. 65; S. C. 2 Stran. 961; *Williams v. Floyer*, Amb. 343; *Lake v. Causfield*, 3 Bro. C. C. 263; *Forder v. Wade*, 4 Bro. C. C. 476; *Carrington v. Payne*, 5 Ves. 411; *Hodson v. ———*, 6 Ves. 135; *Ford v. ———*, 6 Ves. 802.—(f) *Dep. Com. Guide*, 72.