

order revoking or refusing to revoke that order, the failure to give the notice required by this and the two following sections can not be relied upon on appeal. In the absence of proof to the contrary, the court of appeals will assume that the orphans' court gave reasonable notice, and properly decided all matters required to be decided. *Grill v. O'Dell*, 111 Md. 68.

This section referred to in deciding that when a will has been granted or denied probate after contest, the decision is final and the same question can not again be raised by a suit in ejectment. *Johns v. Hodges*, 62 Md. 534.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.
See sections 272 and 338; also notes to sections 344 and 345.

1904, art. 93, sec. 337. 1888, art. 93, sec. 328. 1860, art. 93, sec. 316. 1798, ch. 101, sub-ch. 2, sec. 7.

344. If any such will be exhibited for probate to the orphans' court of the county where the same may be proved, and any of the next relations of the deceased shall attend, or if notice shall appear to have been given as aforesaid, and no caveat shall have been made against the same, the said court may forthwith proceed to take probate thereof.

Duty of the orphans' court under this section; that court has jurisdiction to determine whether there has been the required attendance or notice. Character of the notice required by this and the preceding section. Issues will not be granted on the question as to whether the notice has been given, after the orphans' court has acted thereon. Time within which a petition setting up a lack of notice, must be filed. *Stanley v. Safe Deposit Co.*, 88 Md. 404. And see *Pacy v. Cosgrove*, 113 Md. 320.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.
See notes to sections 343 and 345.

Ibid. sec. 338. 1888, art. 93, sec. 329. 1860, art. 93, sec. 317
1798, ch. 101, sub-ch. 2, sec. 8.

345. If any will or codicil be exhibited to the orphans' court, and none of the near relations of the deceased shall attend, and no notice shall appear to have been given, the court may either direct summons to the said near relations, or some one or more of them, to appear on some fixed day to show cause wherefore the same should not be proved, or direct such notice to be given in the public papers or otherwise, as they may think proper; and if no objection shall be made or caveat entered on or before the day fixed, the court or register of wills in their recess, may take the probate of such will; but if objection shall be made on or before the day appointed, the said court shall have cognizance of the affair, and shall determine according to the testimony produced on both sides.

The notice required by the two preceding sections distinguished from that required by this section. Issues will not be granted on the question of whether the notice prescribed by this section has been given, after the action of the orphans' court thereon. Time within which a petition raising the question of whether the requisite notice has been given, must be filed. *Stanley v. Safe Deposit Co.*, 88 Md. 405. And see *Pacy v. Cosgrove*, 113 Md. 320.

If a caveat has already been filed, the orphans' court can not probate the will until the caveat is disposed of. The prescribed notice must also appear to have been given. *Keene v. Corse*, 80 Md. 22.

When a decision is made between opposing parties, it is a judgment *in rem* conclusively establishing the validity *vel non* of the will. The court has no power to pass on the probate of the will until it is presented for that purpose. *Enmert v. Stouffer*, 64 Md. 553; *Pleasants v. McKenney*, 109 Md. 277. *Worthington v. Gittings*, 56 Md. 547.