

An. Code, 1924, sec. 353. 1912, sec. 343. 1904, sec. 336. 1888, sec. 327. 1798, ch. 101, sub-ch. 2, sec. 6.

358. If any will or codicil be exhibited for proof to the register of wills of the county wherein the same may be proved, in the recess of the court, and any of the next relations of the deceased shall attend and make no objections, or enter no caveat, or if it shall appear that reasonable notice of the time of exhibiting the same hath been given to such of the next relations as might conveniently be therewith served, and no person shall object or enter a caveat, the register shall proceed to take the probate thereof.

In absence of near relatives of deceased or notice to them, it was error to admit will to probate. Presence of counsel; request for delay. *O'Hara v. Miller*, 153 Md. 117.

This and the following section do not contemplate a formal notice such as is contemplated by sec. 360. If it appears that reasonable notice has been given under this section, the court may probate will. When only notice of probate need be given. *Stanley v. Safe Deposit Co.*, 88 Md. 401, and *Lederer v. Johannsen*, 124 Md. 453, affirmed. *Parker v. Leighton*, 131 Md. 413; *Perrin v. Praeger*, 154 Md. 546.

What is meant by the probate of a will, and what is necessary thereto? *Tilghman v. France*, 99 Md. 615.

Where revocation of probate of a will is not asked, and there was no appeal from order permitting will to be probated, nor from an order revoking or refusing to revoke that order, failure to give notice required by this and two following sections cannot be relied upon on appeal. In absence of proof to contrary, court of appeals will assume that orphans' court gave reasonable notice, and properly decided all matters required to be decided. *Grill v. O'Dell*, 111 Md. 68.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See secs. 283 and 353; also notes to secs. 72, 353, 359 and 360.

An. Code, 1924, sec. 354. 1912, sec. 344. 1904, sec. 337. 1888, sec. 328. 1798, ch. 101, sub-ch. 2, sec. 7.

359. 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.

It is only where none of the near relations of deceased are present when will is exhibited for probate that it must appear that reasonable notice was given them; where any of the near relatives attend and no objection or caveat is filed orphans' court may probate will. The order of orphans' court admitting a will to probate should not be rescinded because one of heirs or next of kin subsequently determines to caveat the will. If authority of orphans' court to probate will had depended upon notice to near relations, that court could have determined, subject to an appeal, whether such notice had been given; if action of court was procured by material misrepresentation, however innocent, its order based thereon could be rescinded. *Lederer v. Johannsen*, 124 Md. 455; *Linthicum v. Linthicum*, 130 Md. 151; *Perrin v. Praeger*, 154 Md. 546.

Duty of orphans' court under this section; that court has jurisdiction to determine whether there has been the required attendance or notice. Character of notice required by this and preceding section. Issues will not be granted on question as to whether notice has been given, after 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 secs. 72, 353, 358 and 360.

An. Code, 1924, sec. 355. 1912, sec. 345. 1904, sec. 338. 1888, sec. 329. 1798, ch. 101, sub-ch. 2, sec. 8.

360. 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