

ORPHANS' COURT

During the colonial period, the settlement of the estates of deceased persons was under the jurisdiction of a central probate court called the Prerogative Court. The presiding officer of the court was known as the Commissary General. He appointed a deputy commissary in each county to handle the routine details involved in settling estates. The records of the Prerogative Court have been well preserved and are now available at the Hall of Records. A study of this court and list of its records appears in *Land Office and Prerogative Court Records of Colonial Maryland* by Elisabeth Hartsook and Gust Skordas. (Annapolis, 1946. Publication No. 4 of the Hall of Records Commission.)

Although the Constitution of 1776 provided for the appointment of a register of wills in each county, it made no other provision for the administration of probate matters. This omission was remedied by Chapter 8 of the Acts of February 1777, which abolished the office of Commissary General and established an orphans' court in each county with the same powers and duties within their several counties that were previously exercised by the Commissary General. This included taking probate of wills, granting letters testamentary or letters of administration, appointing appraisers of estates, passing the accounts of executors and administrators, appointing guardians and in general protecting the rights of legatees and orphans.

The register of wills served as clerk of the orphans' court. He recorded the proceedings of the court and the wills, inventories, accounts and other papers filed in the process of settling estates. He was also authorized to perform certain routine duties when court was not in session.

Originally, five to seven justices of the peace were commissioned by the Governor as justices of the orphans' court. In 1790, the number of justices was reduced to three to be appointed from any of the residents of the county. The register of wills was also appointed by the Governor until 1851 when both offices were made elective.

The powers and responsibilities of the orphans' courts and the registers of wills have remained about the same from the time they were created. Even the Act of 1798 which repealed all prior laws and recodified the entire body of testamentary law did not make any major changes. It has served as the basic law in probate matters ever since. Subsequent legislation has tended to bestow increased authority upon the register of wills during the recess of the orphans' court, but otherwise has not greatly affected the jurisdiction of the court.