

CHAPTER XVIII

MARYLAND GOVERNMENT: 1634-1866

GUST SKORDAS

PART I.—THE COLONIAL PERIOD

CHARTER

The Charter granted to Cecilius Calvert, Baron of Baltimore, in 1632 made him absolute "Lord and Proprietary of the Province of Maryland," with powers comparable to those enjoyed by the "Bishop of Durham, within the Bishoprick or County Palatine of Durham."¹ He held his lands in "free and common Soccage," which was the most liberal of the various forms of feudal land tenure. It was required only that he pay to the King a token rent of two Indian arrows each year and one-fifth of all gold and silver mined in the Province.²

The Proprietary was empowered to enact laws with the advice and assent of the freemen of the Province or their delegates or deputies whom he could call together for the framing of laws as often as he deemed it necessary and in the manner which seemed best to him. He was given the authority to execute the laws "by the Imposition of Fines Imprisonment and other Punishment; even if it be necessary and the Quality of the Offence require it by Privation of Member, or Life." The Proprietary was also empowered "to constitute and ordain Judges, Justices, Magistrates and Officers, of what Kind, for what cause, and with what power soever." He could "Remit, Release, Pardon, and Abolish, all Crimes and Offences whatsoever against such Laws, whether before or after Judgment passed."³

In case an emergency arose while the assembly was not in session, Lord Baltimore could "make and constitute fit and wholesome Ordinances" so long as they were "not repugnant nor contrary . . . to the Laws, Statutes or Rights of our Kingdom of England," and so long as they did not "extend to oblige, bind, charge, or take away the Right or Interest of any Person or Persons, of, or in Member, Life, Freehold, Goods or Chattels."⁴

The Lord Proprietary had the power to incorporate burroughs and cities and to establish ports. It is interesting to note also that he was given the right to confer favors upon his subjects and to adorn them with "Titles and Dignities" as long as they were not the same as those used in England.⁵ This, together with the power to erect manors⁶ could easily have led to the establishment of a system of nobility in Maryland comparable to that in England. Actually no titles were ever created and the manors erected were of little significance and short duration.

The Proprietor's military authority was equal to that of a Captain General in the British Army and included the power to wage war for the defense of the Colony and to pursue the enemy beyond its limits.⁷ He could also declare martial law in case of rebellion.⁸

In religious matters, the Proprietary was given the authority "of erecting and

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founding Churches, Chapels, and Places of Worship . . . and of causing the same to be dedicated and consecrated. . . ." He was also given "the Patronages, and Advowsons" of such churches.⁹

There were only a few restraints against all this authority, but they proved to be of immense importance as the colonists struggled to gain the rights and privileges to which they considered themselves entitled. The restriction against the passage of laws or ordinances that were unreasonable or repugnant to the laws of England has previously been cited. But of greater significance was the section that declared all English subjects who were transplanted to the Province and their descendants were to be treated and esteemed as native born subjects of the King and to have "all Privileges Franchises and Liberties" of the Kingdom of England as if they had been born there.¹⁰

The most striking feature of the government outlined by the Charter was its strongly centralized nature. All authority stemmed from a single individual, the Lord Proprietary. It was only natural therefore that personal favor was often a predominant influence in the evolution of colonial institutions of government. From the Proprietor's viewpoint, Maryland was his own private venture and the King had given him the right to do what he pleased with it, subject to very few limitations. He regarded the Province in much the same light that the owner of a large business firm might regard his company. He felt that he had every right to place his relatives or friends in important positions and to reward them by assigning them several offices of profit.

In studying the colonial government, three key periods will be observed and it will be noted that the transition from one period to another was marked by important administrative changes. The first proprietary period lasted from the original settlement to the overthrow of proprietary rule in 1689. It was during this era that the government was most highly-centralized and the spirit of feudalism was most prevalent. With the establishment of the royal government in 1692, a new epoch began and the people of Maryland acquired a status more closely akin to that of English subjects in the home country. The influence of this period of rule by law rather than by the individual will of the Proprietor or his lieutenants continued to have its effect after the government was restored to the Lord Proprietary in 1715. As a result, there was far less evidence of feudalism in the second proprietary period, which lasted until the Revolution.

GOVERNOR AND COUNCIL

Except for two brief periods, 1675-1684 and 1732-1733, when the Proprietor visited the Colony in person,¹¹ the Barons of Baltimore entrusted the active administration of the Province to a governor to whom they delegated much of the power given them in the Charter. The Governor, or Lieutenant General as he was frequently called, was not only the political head of the Province, but he was also the personal representative of the Proprietor and acted as his agent in supervising the collection of his rents and revenues.

The duties and powers of the Governor were prescribed in the commission under which he acted. The commission issued to Leonard Calvert on April 13, 1637,¹² the earliest on record, is quite typical. Leonard, who was the brother of Cecilius and leader of the first expedition to Maryland, was made the supreme

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commander of the military forces of the Colony, both on land and sea, and given complete authority to do whatever was necessary in resisting invasion or suppressing mutiny. He was also authorized to constitute and appoint military and civil officers, although the Proprietor did reserve the right to fill certain of the more important offices, such as Secretary, Commissary General, Attorney General, Judge of the Land Office and Councillor. After the first few years however, the Proprietor usually followed the recommendation of the Governor in naming these officers. The Governor was further authorized to erect ports and to establish places for holding fairs and markets. He could grant pardons and remit fines for all offences against the laws of the Province, but not to the extent of pardoning high treason. He also had the power to grant land, but only in the name of the Lord Proprietary and under the conditions and restrictions imposed by him. In fact, except for the interlude of royal control, all commissions, patents, writs and other public acts of the Governor and other officers of the Province were issued or performed in the name of the Lord Proprietary.

The legislative and judicial responsibilities of the Governor were equally broad and will be brought out in discussing his relationship with those branches of the government.

Obviously, the Lord Proprietary did not vest all this authority in the office of governor without retaining strong control over the person appointed. In the first place, he was careful to select a man whom he considered trustworthy and to require the appointee to take an oath of allegiance. But more important, he made the appointment for an indefinite period and reserved the right to revoke the commission at his own pleasure. The Proprietor also reserved the right to veto laws passed by the assembly even after they had been approved by the Governor.

The gubernatorial commissions were frequently supplemented by the directions given in letters of instruction which the Proprietor sent whenever he deemed it advisable. Ordinarily, these instructions dealt with specific problems, perhaps in response to an inquiry by the Governor, but it was not unusual for them to be general in nature. It was expected also that the Governor keep his Lordship fully informed regarding all important developments in the Province. The Proprietor occasionally issued instructions to other officers and required reports from them. At times also, he sent messages directly to one or both houses of assembly although the normal channel for such communications was through the Governor.¹³

The commission of 1637 also named a Council composed of Jerome Hawley, Thomas Cornwallis and John Lewger to advise and assist the Governor. By 1692, the number of Councillors had been increased to twelve.¹⁴ Together with the Governor they always constituted the chief executive body of the provincial government. The members of the Council almost invariably held other offices, such as Secretary, Surveyor General, Provincial Court Justice, Commissary General or Naval Officer. This practice was so universally observed that the Councillors received little or no compensation for their services as such out of public funds, the Lower House contending that it was Lord Baltimore's duty to provide for their support.

The text of the commissions of the colonial governors did not vary greatly but the real authority of the Governor declined steadily. This was due in part to the weakness and incompetence of some of the men who held the office, but mainly

to the strenuous efforts of the Lower House in championing the cause of the people of the Colony. Many of the activities which had formerly been the prerogatives of the Governor and Council became the business of the General Assembly. Among these were the creation of offices, regulation of officers' fees, levying of taxes, erection of counties and naturalization of foreigners. The Governor and Council continued to occupy themselves with such problems as, calling, proroguing or dissolving the assembly, hearing petitions, granting pardons, issuing death warrants and with such external affairs as, relations with the Indians and the dispute over the boundary line between Maryland and Pennsylvania. Mereness has commented that "The marked decrease in the business of the Council and the corresponding increase in that of the General Assembly is a striking reflection of the change from monarchical toward popular government."¹⁵

Approximately half of the Governor's compensation came from a duty on tobacco exports which was first imposed in 1671. From 1694, he also received the benefit of a port duty on foreign vessels. Other income was derived from the issuance of licenses and from the fees associated with the offices of Chancellor and Surveyor General. Large grants of land by the Proprietor and occasional gratuities voted by the Assembly also supplemented the gubernatorial revenue.¹⁶

SECRETARY

The commission of 1637 that named the Lieutenant General and his Council and prescribed their duties also bestowed the office of Secretary of the Province upon John Lewger, a member of the Council.¹⁷ The Secretary of the Province was just what the name implies. He was responsible for recording all the proceedings of the Governor and Council, including grants of land and offices. At first, he was also assigned the duty of collecting the rents, duties and other revenues due to the Lord Proprietary. On January 24, 1637/8 Secretary Lewger was appointed "Conservator of the Peace within the County of St Maries," giving him powers equivalent to those usually exercised by a justice of the peace in England.¹⁸ He was also named commissioner "in Causes Testamentary" with full authority to prove wills, grant letters of administration, take inventories and accounts and perform all other probate duties. When Secretary Lewger's commission was renewed in 1642, the issuance of marriage licenses was added to all his other work.¹⁹

In 1643, the Secretary was named a member and made responsible for drawing up the accounts of the Commissioners of his Lordship's Treasury in Maryland.²⁰ A year later he was given custody of the lesser seal of the Province.²¹ He was also named Attorney General. By an act of 1663, the office of Notary Public was added to the others held by the Secretary.²² He soon began to appoint deputies to perform this duty and by 1698, he had deputies in most, if not all, counties and in Annapolis.²³

With such a varied assortment of duties to perform, it is not surprising that the Secretary needed clerical assistance. It appears that as early as 1647, and perhaps earlier, he had at least one clerk.²⁴ By 1669, he must have had several, for in May of that year John Blomfield was designated "Chief Clerk of the Secretaries Office of the Provincial Court and Council and of the Custody and keeping of the lesser Seal Records and Registeries of the said Office."²⁵

Gradually, however, he was deprived of his offices. As early as 1642, he was

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relieved of some of his duties in the distribution of lands by the commissioning of a Surveyor General who was made responsible for the appointment and supervision of surveyors. Other offices held at one time by the Secretary, but later assigned to other men are listed hereafter along with the date they were detached: Agent and Receiver General (1651), Attorney General (1657), Commissary General (1673), Naval Officer (1676) and Rent Roll Keeper (1689).²⁶

When the royal government was established in Maryland, Sir Thomas Lawrence was commissioned as Secretary by the crown. Before he departed for England in 1706, he appointed a deputy, Col. Philemon Lloyd, to act in his stead. From then on the secretariat was divided between a Principal Secretary, residing in England, and a Deputy Secretary, residing in the Colony.²⁷ The Deputy performed the work, collected whatever fees and emoluments were due and paid a fixed amount to the Principal Secretary, generally about £200, although for a while this payment was as low as £50.²⁸

At the end of the royal period, Thomas Beake, who had been commissioned by Queen Anne in 1714, was retained as Principal Secretary. He had been instrumental in having the Colony returned to Lord Baltimore and as a reward for his services, he had been promised the office for life. But when the new commission was issued on May 30, 1715, Lord Guilford, acting for young Lord Baltimore, his ward, included Charles Lowe in the commission. It is possible that Beake may have agreed to this arrangement voluntarily, for Lowe was his brother-in-law.²⁹

Philemon Lloyd continued to perform his usual duties as Deputy Secretary. In 1717, acting under instructions from Beake and Lowe, he assumed the title of "Judge of the Land Office," and took charge of the office. Finally, in 1738, the post of Judge of the Land Office was made a separate place of profit.³⁰

By now the once very powerful office of Secretary had diminished greatly in importance, but it remained one of the most lucrative in the Province. Most of the Secretarial income was derived from fees. For example the list of officer's fees found in the tobacco inspection act of 1747 included approximately 125 services for which the Secretary collected fees.³¹ The appointment of the clerks of the county courts, which the Secretary had controlled since 1668 provided an additional source of revenue, for he often sold the clerkships to the highest bidder without regard to the purchaser's qualifications. Many of the Secretaries also demanded a share of the profits of these offices, usually about ten per cent.³²

ATTORNEY GENERAL

The Attorney General, like many of the other important officers of the provincial government of Maryland, had a dual responsibility. As the chief law-officer of the Colony, he prosecuted crimes against the public. Such cases were instituted in the name of the Lord Proprietary, or of the King during the royal period. In addition, he acted as the personal attorney of Lord Baltimore whenever he had occasion to sue for the collection of rents, duties, debts or other obligations due him. Occasionally, the Attorney General served as legal adviser to the Council or to the General Assembly.³³

The earliest appointment of an Attorney General occurred in 1644 when, as has been previously mentioned, this post was added to the others held by Secretary John Lewger. With the commissioning of Richard Smith in 1657, the Attorney

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General was permanently established as an officer in his own right. On March 22, 1686/7, Michael Miller came before the County Court of Kent County and produced a deputation from Attorney General Thomas Burford which named him "Clerke of the Indictments & Prosecutor of his Lordshipps pleas." By 1688, the Attorney General had a deputy in each county.³⁴

During the royal period, the responsibility of prosecuting criminal offences and naming the Clerks of the Indictments was transferred from Attorney General Charles Carroll, who had been appointed by the Lord Proprietary in 1688, to the Attorney General for the crown. The latter also represented the King in civil suits. Thus, Carroll's legal duties were limited to representing the Lord Proprietary in civil cases, although he continued to hold the title of Attorney General throughout the royal period. When Lord Baltimore regained control of his Colony, Carroll resumed his former prerogatives and all subsequent Attorneys General were commissioned by the Proprietor.³⁵

LAND OFFICE

It has already been observed that under the Charter all land in Maryland belonged to the Lord Proprietary. One of the major concerns of the provincial government was the distribution of land to individuals. Even the most liberal of these grants required that the person holding the land pay a rent on it. Obviously, the more land that could be placed in private hands, the greater would be the revenue derived from such rents. To encourage the rapid settlement of the Province, Lord Baltimore made generous grants of land to persons who would transport themselves and others there.

The earliest land transactions were attended to by the Governor who was empowered by the commission of 1637 to pass grants of land under the Great Seal. The Secretary was directed to record such grants. With the appointment of John Langford as Surveyor General on March 24, 1641/42, the Secretary was relieved of the responsibility of having surveys properly made and signing the certificate of survey. The custom of having a Surveyor General on each shore began in 1697 and continued to the end of the colonial period.

From the beginning the Surveyor General had a deputy to assist him with his work. When Jerome White was appointed to the office in 1661, he instigated the practice of having several deputies, who made the surveys and signed the certificates. Within a decade, a deputy was located in each county. Consequently, the Surveyor General had little to do but to appoint his deputies, issue occasional instructions to them and collect fees. This made the office so attractive that from 1717 to 1774 the Governor almost invariably retained for himself the Surveyor Generalship of one shore or the other, preferably the Western Shore.³⁶ From 1685, an Examiner General had been appointed to examine and approve all certificates of survey or resurvey before they were received into the Land Office to be recorded.³⁷

Meanwhile the Land Office had been established in 1680. John Llewellyn, the clerk in the Secretary's Office who had been responsible for the recording of land grants, was placed in charge of the office and denominated Clerk and Register of the Land Office. He was given custody of the land records and authorized to prove rights, to issue and sign warrants and to draw up patents. These were powers formerly reserved to the Governor or Secretary.³⁸

In 1684, the management of the Land Office was committed to a Land Council,

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composed of the two Secretaries of the Province, the Agent and one other person, all of whom were members of the Governor's Council. The Register appears to have been reduced to a clerical status.

The difficulties and uncertainties created by the Protestant Revolution caused the Land Office to suspend business in 1689. With the establishment of the royal government in Maryland, a dispute arose over the management of land affairs. Henry Darnall, the Agent and Receiver General of the Lord Proprietary and a member of the Land Council, contended that jurisdiction in such matters was still the private concern of his Lordship by the terms of his Charter which had not been overthrown. The crown Secretary, Sir Thomas Lawrence, who had seized control of the records, claimed that land transactions were public business and that it was the traditional right of his office to issue warrants and receive fees for doing so. He even denied Darnall access to the records unless he paid the usual fee charged for making searches. The Governor and Council and the General Assembly supported the claim that land business was public in nature. By 1696, a compromise had been reached whereby the Secretary retained custody of the records, but the Proprietor's Agent had free access to them. The Agent and the Register of the Land Office received one-half of all fees accruing from land grants and the Secretary received the other half with the exception that the Chancellor collected half the fee for affixing the Great Seal to patents. It is probably no coincidence that the purchase price of land doubled shortly thereafter.

When Lord Baltimore regained the government of his Colony in 1715, Philemon Lloyd, the Secretary in Maryland, resumed full control of the Land Office. On June 13, 1717, Lloyd took upon himself the position of Judge of the Land Office. He appointed Edward Griffith to be register and keeper of the land records and instructed him to take into his custody the records which were still in the possession of Charles Carroll, the former Agent and Receiver General.³⁹ The appointment of Col. Levin Gale as Judge of the Land Office marked the divorce of the office from that of the Deputy Secretary. The custom of having two men jointly commissioned as Judges of the Land Office was inaugurated in 1746 and continued for the remainder of the colonial period.⁴⁰

FINANCIAL STRUCTURE

During the colonial period, there were two major revenue establishments in Maryland. One was concerned with supporting the normal activities of government: protection of life and property, adoption of laws, administration of justice and so forth. The other encompassed all the various efforts of the Lord Proprietary to derive income for his own uses. The financing of the original expedition to Maryland and the subsequent support of the early settlers until they were in a position to take care of themselves had been an expensive operation for Cecilius Calvert. It has been estimated that during the first few years, Cecilius had spent £40,000 sterling establishing his colony, with little return.⁴¹ He was not prepared to absorb such losses forever. It was his hope that eventually the colony would not only pay its own expenses, but would produce a steady income. The later Lords Baltimore left little doubt about their expectations in this regard and many of the disputes between the Upper House, representing the Lord Proprietary, and the Lower House, representing the colonists stem from this expectation of profit.

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When the royal government was established, it became necessary to find means of supporting the officers appointed by the crown. This was accomplished partly by appropriating certain revenues formerly assigned to the Lord Proprietary and partly by imposing additional customs duties. The new duties remained in force even after the proprietary government was restored and the original purpose no longer existed.

PROVINCIAL REVENUE

The provincial government of Maryland derived most of its support from three main sources of revenue: poll taxes, duties on foreign trade and fees. As early as 1640, poll taxes were levied to meet the expenses of the General Assembly.⁴² At first, each hundred was responsible for paying expenses of its own burgesses while the common charges of the Assembly, such as clerical hire and rental of a meeting place, were apportioned equally amongst the hundreds.⁴³ By 1654 the county had replaced the hundred as the unit of assessment.⁴⁴ The custom of differentiating between the "itinerant charges," *i.e.* travel expenses, of the burgesses which were levied on the county they represented and the common charges of the Assembly which were levied equally on all the taxable inhabitants of the Province was finally discontinued in 1678.⁴⁵ From then on all the expenses of the delegates were included in the public levy which was assessed equally on all the taxables in the Province.

What constituted a "taxable" varied at first and, for a while, even included land and livestock. But by a law adopted in 1676,⁴⁶ it was decreed that all freemen, except ministers and priests and such poor persons as received alms, were to be counted as taxables. All male children born in the Province were to be counted as taxable at the age of sixteen, as were all male servants imported into the Province at the age of sixteen or over and all slaves, male or female, who were sixteen years of age or older. Similar laws were passed in 1692 and 1712.⁴⁷

These acts also placed the responsibility of preparing complete and accurate lists of the taxables upon the constables, who were required to visit personally every household within their respective hundreds. The lists thus prepared were returned to the county sheriffs and county courts.

During the first proprietary period various plans were used for examining and passing the accounts against the public and for laying the assessment. At times this was done by the full Assembly or by a committee of both houses.⁴⁸ But more often a committee composed of one delegate from each hundred or county was appointed to meet with the Governor and Council.⁴⁹ Whatever method was used the full list of accounts allowed was incorporated in the act which authorized their payment.

Soon after the royal government was established the practice of listing all the public charges in the levy act was discontinued⁵⁰ and the entire procedure for levying the assessment made more systematic and regular. At the beginning of each session the Committee of Accounts met to hear all claims against the public and recorded those passed in the "Journal of Accounts."⁵¹ The Journal was read and assented to by both houses. After which an act was passed stating the total amount due on the Journal and providing for its payment. The usual time for paying the accounts was on October 10, until 1716 when the date was changed to November 10. If the Assembly session was held early in the year, as was frequently the case,

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a joint committee was named in the act and instructed to meet in Annapolis about the time the accounts were due and "then & there to Lay and Assess the said Publick Levy already raised and also to Allow Levy and Assess what further Charge may Accrue which to them shall Justly Appeare to be due from the Publick. . . ." ⁵² If the Assembly met in the fall, the total amount owed by the Journal of Accounts was stated in the levy law and the payment of the persons listed therein was authorized.

From the beginning, the responsibility of collecting the public levy was entrusted to the county sheriffs, who received ten per cent of the total they collected by way of compensation. ⁵³ It is evident also that the sheriffs took an active part in paying public creditors, for it was a simple matter to make such disbursements at the same time the assessment was being collected. However in 1694, a public treasurer was appointed on each shore and after that the duty of disbursing public funds seems to have been divided between the treasurers and the sheriffs. ⁵⁴ For example, in the levy law of 1747, the total amount of £1233 1s. 6d. current money and 2,674,414 pounds of tobacco was owed on the Journal of Accounts. ⁵⁵ The money due was to be paid out of the public monies in the hands of the treasurers and the tobacco payments were to be made by the sheriffs, who as usual were directed to collect the assessment and allowed a commission of ten per cent for doing so.

After the paper money act of 1733 was put into effect, there was an increasing tendency to use bills of credit, as the money was called, for the payment of public expenses. In fact, this was one of the means provided in the act for putting the bills into circulation. From time to time, additional bills of credit were issued to meet extraordinary emergencies, such as, the expeditions to the West Indies in 1740 and to Canada in 1745. ⁵⁶ In such instances, special duties or taxes were imposed to aid in the redemption of these issues. Because of the controversy over the salary of the Clerk of the Council, who was also Clerk of the Upper House, no public levy act was passed from 1756 through May 1766. When the dispute was finally settled in October 1766, the amount owed on the Journal of Accounts was much too large to be paid by a poll tax levied in a single year. At the same time, the paper money issued in 1733 had been retired and the shortage of currency was causing the people to clamor for some remedy. A happy solution to both these problems was brought about by authorizing another emission of bills of credit to pay the public debt. ⁵⁷ The emissions of 1769 ⁵⁸ and 1773 ⁵⁹ were also used, in part, to pay public creditors. It is interesting to note also that the erection of the State House now standing in Annapolis was authorized by the emission act of 1769 and paid for by bills of credit issued under the act. ⁶⁰

Most of the duties imposed on exports and imports were intended primarily to produce revenue. However, the usefulness of such measures in regulating trade was not altogether ignored. The nine pence per gallon duty on liquors imported by land from Pennsylvania was obviously intended to reduce such traffic and the act imposing a twenty shilling duty per poll on Irish servants was admittedly designed "to prevent the Importing too great a number of Irish Papists into this Province." ⁶¹

The earliest duty of any significance was a tonnage duty imposed by order of Assembly in 1650. As originally levied, it laid an impost of two pounds of shot and

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one-half pound of powder or equivalent value on every ton of burden of foreign vessels, with flush deck fore and aft, trading in the Province. The proceeds were to be turned over to the Lord Proprietary to be used for strengthening the fort at St. Inigoes. The amount of this tax was increased to three pounds of shot and one-half pound of powder in 1661, and the revenue was paid to the Proprietor without any restrictions.⁶² In 1671, the Assembly enacted a law which gave the Lord Proprietary a duty of two shillings sterling per hogshead of tobacco exported on the condition that his Lordship would receive payment for his quit rents and alienation fines in tobacco at the rate of two pence per pound. One shilling or half of the duty thus collected was to be used for purchasing arms and ammunition, for the defence of the Province and for defraying other necessary charges of government. But according to the preamble of an act passed in 1692, the Lord Proprietary had retained the full two shillings to himself.⁶³

It is scarcely surprising to note that the earliest duties were collected by the ubiquitous Secretary. Acting alone at first, in 1671, he deputed the sheriffs in the more remote areas to assist him. Five years later, the Lord Proprietor appointed Naval Officers, as the customs officials of the day were called, to collect duties in three districts: Patuxent, Pocomoke and North Potomac.⁶⁴

Under the royal government, duties were increasingly devoted to public purposes; a trend that continued even after Lord Baltimore had regained control of the Colony. In addition, the number of articles taxed was enlarged to include duties on imports of liquors, Irish servants, Negroes, pork, pitch and tar, and on exports of meat, skins and furs.⁶⁵ By 1694, there were two sets of customs officers in Maryland. The three proprietary Naval Officers collected those duties that were still allocated to Lord Baltimore and paid them to his Lordship's Agent and Receiver General. The duties levied for public purposes were collected by six provincial Naval Officers who delivered the receipts therefrom to the treasurers of their respective shores. The provincial Officers also collected the several duties that belonged to the crown and paid them to the crown receiver. This state of affairs lasted until 1716 when the proprietary officers were dismissed and the provincial Naval Officers assigned the collection of all duties.⁶⁶

Many of the officials of the provincial government derived their principal support from the fees they received for their services. It is not surprising therefore that they endeavored constantly to keep fees at as high a level as possible, and to increase them whenever they could. On the other hand, the people who paid for these services were just as eager to keep fees at the lowest possible level. As a result, the regulation of officers' fees was the subject of controversy throughout the colonial period. It was a rare session of the Assembly in which the subject did not arise in one form or another. Both sides were well represented there. The members of the Upper House almost invariably held other offices that depended for part, if not all, of their income on the fees collected for their services. The Lower House, as usual, took the side of the people and fought for lower fees. The consequence was that most of the laws to limit officers' fees represented compromises between the two houses. But here, as in most other controversies, there was an observable tendency for the pendulum of power to swing from the Lord Proprietary to the people of the Colony.

Except for the brief period, 1639-1642, fees were established by proclamation

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of the Lord Proprietor until 1676. The Lower House then obtained the passage of a bill embodying the list of fees as established by proclamation of the Proprietary.⁶⁷ The purpose of this law was to prevent extortion by publishing the fees that could be charged by public officers. In 1692, the Lower House gained a further concession from the Governor when he agreed to the proposition that no fees could be increased or decreased without the consent of the Assembly. Constant efforts by the Lower House obtained a decrease in the fees of certain officers in 1719, but were otherwise ineffectual until the tobacco inspection act of 1747 was passed. Included in this act was a table reducing officers' fees by twenty percent; the theory being that the increased value of tobacco resulting from the act would compensate for the reduction. This act was renewed constantly until the lower House refused to pass it in 1771. Immediately after it had expired, Governor Eden issued a proclamation regulating fees just as they had been in the act. This was protested loudly, but to no avail.⁶⁸

PROPRIETARY REVENUE

By far the greatest proportion of the revenue derived by the Lord Proprietor from his Province came to him by virtue of his ownership of the land. The procedure for granting land has been described in an earlier chapter. Not even the most liberal of grants gave the landowner outright possession of the land. The grantee was always in the position of being a tenant of the Lord Proprietor and as such was expected to pay him an annual rental called a quit rent for the use of the land. Otherwise the typical landowner in Maryland could do as he pleased with his land. He could use it in whatever manner he chose, bequeath it to his heirs or sell it to another individual. If the tenant conveyed the land to another person, he was required to pay a fee equal to one year's rent to the Proprietary. These fees were known as alienation fines.

In order to insure the maximum return from quit rents, it was essential to keep an accurate record of the landowners in the Province. No doubt the Secretary, who had charge of the other land records, at first, kept this record too.⁶⁹ As the Colony grew in population and expanded in size, it became increasingly difficult for the Secretary to keep his rent rolls up-to-date. Therefore, in 1671, Governor Charles Calvert directed the clerk of each county court to prepare a roll for his own county and transmit it to St. Mary's. Thereafter, it appears to have been the continuing responsibility of the clerks to assist the Secretary in keeping the rent rolls up-to-date until 1689.

During the royal period, the Secretary was appointed by the crown, with the result that the Agent and Receiver General assumed possession of the rent roll until, in 1699, it was destroyed by vandals who raided Lord Baltimore's house in Maryland. From 1699 to 1707, the Proprietor leased the collection of his quit rents to two "Copartners in Farming the Quit-Rents," who, as part of the agreement prepared a new rent roll. This new roll was turned over to James Carroll who was appointed Rent Roll Keeper in 1707.⁷⁰

In 1717, Lord Guilford, guardian of Lord Baltimore, agreed to accept a duty of two shillings sterling on all tobacco exported in lieu of all quit rents and alienation fines. This agreement was incorporated into an act of Assembly, often called the commutation act. It remained in effect until a proposed renewal was defeated in

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1733.⁷¹ Even though the office of Rent Roll Keeper had been filled all through this period, the incumbents had had little incentive to keep their rolls accurately and the proprietary organization for collecting the quit rents had lapsed into a state of decay. It now had to be reconstituted. The Governor appointed a Rent Roll Keeper for each shore. They were instructed to prepare a rent roll for each county on their respective shores. The rent rolls listed all the land within a county by tract name, giving the name of the original patentee, the acreage, the amount of rent and the name of the current owner. All officials concerned in any way with land transactions were expected to return annually to the Rent Roll Keepers the information they needed in compiling their rolls.⁷²

To facilitate the collection of rents, the Rent Roll Keepers were required to prepare each year a debt book for every county within their jurisdiction. The debt books contained practically the same information as the rent rolls, but listed the lands under the names of the individual owners rather than by tract name. Copies of these books were turned over to the various collectors of the quit rents who paid the money and tobacco they received to the Agent and Receiver General, the key figure in the management of Lord Baltimore's financial affairs in Maryland. The Governor often collaborated with him in such matters.

The origin of the office of Agent and Receiver General may also be traced to the familiar commission of 1637. In it the Proprietor named Secretary Lewger to be "our Collector and Receiver of all our Rents Revenues profits and Customes from time to time to be due or payable within the said Province."⁷³ The Secretary, along with the Governor and three other men, was also a member of the short-lived board of commissioners of his Lordship's treasury which was appointed in 1643. A similar board was commissioned in 1646.

Upon the appointment of Job Chandler in 1651, the Receiver General became an independent office, although it was not unusual for the incumbent to hold other positions as well. Governor Charles Calvert retained the office for himself from 1661 until he sailed to England in 1676 to claim his title as the third Lord Baltimore. Very likely, he resumed the office upon his return to Maryland in 1679 and did not relinquish it until he went back to England in 1684. At which time he commissioned Col. Henry Darnall, Agent and Receiver General and also made him a member of the newly-constituted Land Council.⁷⁴

During the royal period, Agent Darnall and Attorney General Charles Carroll were the principal representatives of his Lordship in Maryland. They fought hard and with some success to preserve and protect the proprietary rights.⁷⁵

The importance of the Agent and Receiver General diminished considerably while the commutation act was in effect. The office regained its former responsibilities after the act expired in 1733, but through incompetence or neglect, the incumbents failed to perform their duties to the satisfaction of the Lord Proprietor. As a result, he sent instructions in 1766 that a Board of Revenue be created to oversee the operations of the Agent and Receiver General and to audit his accounts.⁷⁶ This Board was composed of the Governor, Commissary General, Deputy Secretary, Attorney General, and the Judges of the Land Office. It met three times a year, unless a special contingency arose. A clerk recorded its proceedings.⁷⁷ The Board supervised not only the Receiver General, but all other officials who had any part in collecting or receiving the proprietary revenue. It was obviously a very

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powerful body, but it had only a brief existence, for it did not begin meeting until 1768 and the Revolution brought an end to its operations.

In addition to the various revenues derived from his ownership of land, the Lord Proprietary received income from several other sources. The profits he received from duties have already been discussed. For the greater part of the colonial period, the fines imposed for violations of laws were paid to the Proprietor or his agents, without question. Recognizances and other bonds were also made payable to Lord Baltimore and whenever they were forfeited, he received the amount specified in the bond. Finally, in 1739, the Lower House objected, contending that fines and forfeitures were paid to the Proprietor only in trust, and should be employed for public purposes. Beginning in 1745, the Lower House frequently requested an account of the funds collected from this source and a report on how they had been applied to the support of the government. Needless to say, such a report was never rendered and the Proprietor continued to collect this revenue, although the Lower House never lost an opportunity to dispute his right to do so.⁷⁸

The Proprietor also claimed the right to issue licenses and to receive the fees arising therefrom. At first, the Assembly recognized this right and even passed a law in 1678 which gave him the proceeds derived from the issuance of ordinary licenses. But early in the royal period, the crown Secretary claimed the money from licenses and apparently received it, even though the Assembly, especially the Lower House, urged that the money be used for the support of the government. After the Proprietor was restored, the Lower House reluctantly acquiesced to his wish that the license money be given to the two Secretaries. From 1740 to 1763, the money was appropriated toward redeeming bills of credit issued to pay the expenses of the colonial wars. Finally, after a dispute of several years, the Proprietor relinquished all claims and the money was devoted to the payment of public expenses.⁷⁹

GENERAL ASSEMBLY

It was in the General Assembly that the colonists waged the stubborn and unrelenting battle that gradually won for them a large measure of independence. By the time the Revolution began, they had already attained a considerable degree of self-rule and it was this ability to govern themselves that enabled them to transfer so smoothly from proprietary rule to independent statehood.

The Maryland General Assembly was modeled after that of the county palatine of Durham although the Maryland Assembly was given much greater authority in the enactment of legislation. Moreover, the distance from home, the difference in environment and other factors combined to create an institution quite different from its model.

The settlers had hardly landed in St. Mary's when they became embroiled in a dispute with the Lord Proprietary over the right to initiate legislation. Early in 1635 they met in general assembly and adopted a body of laws by which they wished to be governed. No record of the proceedings of this Assembly has been preserved.⁸⁰ However, the reaction of the Lord Proprietary to the laws is known. In the commission he issued to Leonard Calvert in 1637, he directed Leonard to assemble the freemen of the Province or their deputies at St. Mary's on January 25, 1637/8 and to signify to them that he had "disassented" to all laws heretofore made within the Province and declared them all void. Cecilius further submitted

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his own body of laws and ordinances for the approval of the Assembly. It is evident from the tenor of his message that he fully expected the laws to be confirmed, but the colonists had other ideas.

In accordance with the instruction in his commission, the Governor summoned a general assembly of the Freemen of the Province on January 25, 1637/8. This, incidently, is the first meeting of the Assembly for which the proceedings have been preserved. All the freemen of the Province were not only eligible but were required to attend, either in person or by proxy, and were fined if they were absent without good reason.⁸¹ The Lieutenant General and the members of his Council were also present. Most of the men present had received special summonses, but a number of freemen who had not received such writs claimed the right to attend and were admitted.⁸²

The first important question to be voted upon by the Assembly was whether to receive the laws submitted for their confirmation by the Lord Proprietary. The President, Leonard Calvert, and the Secretary with the help of their proxies cast 14 votes for the affirmative, but the rest of the members mustered 37 votes for the negative and defeated the laws. The Assembly then proceeded to pass its own body of laws and adjourned.⁸³ The Lord Proprietary also refused to assent to these laws, at first, but then he appears to have relented, for in the next session of the Assembly the following letter dated August 21, 1638, and addressed to Leonard Calvert was read:

“Dear Brother

I do hereby give you full Power and Authority from time to time in every General Assembly Summoned by you in the Province of Maryland in my name to give assent unto such Laws as you shall think fit and necessary for the Good Government of the said Province of Maryland and which shall be Consented unto and approved of by the Freemen of that Province or the Major part of them or their deputies assembled by you there from time to time for the enactment of Laws within that province provided that the said Laws so to be assented unto be as near as conveniently may be Agreeabel & not Contrary to the laws of England. . . .”⁸⁴

He further declared that such laws would remain in force until he had had an opportunity to signify his dissent or thought fit to confirm them. From then on the right of the Assembly to initiate legislation was clearly established although the Proprietor made another abortive effort to assume the right about ten years later.⁸⁵

The compulsory democracy of the earliest sessions, even when relieved by the proxy system of representation, had not proven altogether satisfactory. Therefore, in subsequent assemblies, the freemen were given the option of attending in person or by delegate or proxy. By 1650, each of the hundreds was electing delegates or burgesses and from then on this was the established mode of representation, except that in 1654, the electing unit became the county instead of the hundred.⁸⁶

Meanwhile the colonists had come to realize that as long as the Governor had the authority of summoning delegates by personal writs he could control the Assembly. As early as 1642, Robert Vaughan, in the name of the rest of the burgesses, proposed that the Assembly be divided into two houses. The request was denied by the Lieutenant General.⁸⁷ It was not until 1650 that the separation was actually accomplished.⁸⁸ The Assembly reverted to unicameral sessions in 1654 and 1657

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when the Colony was under the control of the Parliamentary Commissioners, but this was only temporary.⁸⁹ Since 1658, Maryland has always had a bicameral legislature.

The Upper House was comprised of the Governor and Council until 1675. After that the Governor ceased to sit with the Council when it exercised its legislative functions.⁹⁰ Never having more than twelve members, the Upper House conducted its business in full session. The only committees appointed were those required for conferences with corresponding committees of the Lower House. The members of the Council being appointed by the Lord Proprietor, it is not surprising that when they sat as the Upper House of Assembly, they almost invariably supported the Proprietor's cause in any dispute with the Lower House.

The Lower House, being composed of burgesses or delegates elected by the freemen of the Province, became the champions of the colonists in their struggle to maintain what they considered their rights and privileges as Englishmen. In speaking of this House McMahon says,

"It is somewhat remarkable that throughout the whole colonial existence of Maryland, the history of its legislation does not exhibit a single instance of treacherous or timid abandonment, by this House, of the rights and interests of the colony. Pursuing, in the general tenor of their conduct, the happy medium between the arrogance of power and the servility of submission, they were the vestal preservers of liberty in every age of the colony. The consequence was, that this uniform yet temperate adherence to their rights, even whilst it encountered the resistance, seldom provoked the serious indignation of the proprietary: and the good correspondence between the government and the people being thus preserved, the colonial history of Maryland exhibits one of the finest specimens of colonial administration."⁹¹

From 1654, the Lower House was composed of from one to four Delegates or Burgesses elected from each county. At first all freemen were eligible to vote for Burgesses, but beginning in 1670, suffrage was restricted to freemen who had a freehold of at least fifty acres or a visible estate of £40 sterling. Burgesses had to meet the same requirements.⁹² By summoning only one or two of the four Delegates elected for each county, the Governor was able to exercise a strong influence over the Lower House. However, persistent effort on the part of the Lower House resulted in the passage, in 1692, of an act of assembly which guaranteed the right of full representation at every session of the Assembly.⁹³ The Proprietor did retain his charter right to convene, prorogue or dissolve the Assembly. He also retained the right to dissent to any law passed by the Assembly, but the weight of public opinion caused him to use an increasing degree of constraint in exercising these powers.

It appears that at the earliest meetings of the Assembly the Secretary served as its clerk, for he is seen performing several clerical duties.⁹⁴ On October 12, 1640, a Clerk of the Assembly in the person of William Bretton is found in the records. An order passed the same day allowing "the Clerk of the Assembly" five shillings per day would seem to confirm the supposition that the appointment was being made for the first time. Moreover, on the following day, the Clerk was referred to in the "Orders for the Government of the House," although the office had not been mentioned in previous orders.⁹⁵

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After the Assembly was divided in 1650, Bretton was chosen Clerk of the House of Burgesses and the Secretary became Clerk of the Upper House. The Secretary also served as Clerk during the unicameral sessions of 1654 and 1657, but when the Assembly was again divided in 1658, the position of Clerk of the Lower House was permanently established. The Secretary continued to act as Clerk of the Upper House until, in 1661, John Gittings was appointed to be its Clerk. Beginning in 1678, the Clerk of the Council invariably served as the Clerk of the Upper House as well.⁹⁶ At the time the Assembly was divided and again from 1671 to 1689, the Lord Proprietor or the Governor appointed the Clerk of the Lower House. At all other times the House selected its own Clerk subject to the approval of the Governor.

The Assembly also had a number of minor officers. A sergeant-at-arms first appears in 1640.⁹⁷ By 1662, the Upper House had a doorkeeper and a messenger,⁹⁸ and no doubt the Lower House, ever jealous of its prerogatives, soon had similar officers. Occasionally one finds references to a drummer summoning the Assembly into session.

As early as 1642, a committee was appointed to allow the accounts of Burgesses and officers of the Assembly and to assess the sums due from each hundred.⁹⁹ A committee to prepare the laws was named in 1650.¹⁰⁰ A committee on privileges and elections was appointed by the Lower House in 1678. By 1696, the committees on accounts, laws and privileges and elections together with another on grievances had become standing committees, and several of them had clerks of their own.¹⁰¹ From time to time other committees were appointed, such as, the "Committee to enquire into the State and Condition of the Arms and Ammunition, and Accounts relating thereto" and "the Committee to inspect the Accounts and Proceedings of the Commissioners for emitting Bills of Credit."¹⁰²

JUDICIARY

The colonial courts of Maryland were consciously modeled after those of England. However the colonists were not inflexible in their acceptance of English legal institutions and procedures. They adopted what was suited to their needs or inclination, but did not hesitate to revise or discard what was not. For example, the manorial courts and hundred courts were actively used in England, but only a few such courts were established in Maryland and they were short-lived. Also, in England probate matters were handled by an ecclesiastical court, presided over by the Archbishop of Canterbury, but in Maryland the Prerogative Court, although named after the English court and employing many of its procedures, was always a lay court.

COURT OF APPEALS

As was true of the Assembly of Durham, which sat as a court of law as well as a legislature, so also, the early proceedings of the General Assembly of Maryland contain occasional references to cases tried by that body. With the establishment of other courts in the Province, such references became more infrequent. At first, the Assembly as a whole also heard appeals from the lower courts. But when the Assembly was divided in 1650, the Upper House or Governor and Council became the Court of Appeals.¹⁰³

The right of appeal appears to have been little used before 1694. This may have been due in part to the fact that the Governor and Council sat not only as the

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Court of Appeals, but also as the Provincial Court, which was the next highest court in the Province. Thus, once a decision had been rendered by the Provincial Court the loser may have deemed it futile to appeal to the same body of men for a reversal of judgment. Strangely enough, there are instances of just such reversal. Another factor may have been the uncertainty as to just how appeals should be brought before the Upper House, especially with regard to writs of error.¹⁰⁴

Early in the royal period, the procedure for filing appeals was placed on a more systematic basis by an act of assembly. Appeal to the Governor and Council from judgments of the Provincial Court or decrees of the Chancery Court was limited to cases where the original debt or damages exceeded £50 sterling or 20,000 pounds of tobacco. Further appeal to the King in Privy Council was also permitted provided the value of the case exceeded £300 sterling and the appeal was made within a fortnight. No provision was made regarding appeals in criminal cases, but several actual cases found in the records indicate that persons convicted of crimes did have the right of appeal.¹⁰⁵

The new Court met regularly, usually in May and October of each year. The Clerk of the Council was also Clerk of the Court of Appeals, and he kept a special record of the cases heard in that Court. Earlier appeals cases had been recorded amongst the other proceeding of the Governor and Council. Once established, the organization of the Court of Appeals remained relatively unchanged for the rest of the colonial period.¹⁰⁶

Meanwhile the Lower House did retain certain judicial functions. It never surrendered its right to try cases although instances of cases actually being tried by the Lower House are extremely rare. More important, when certain officials, such as sheriffs, coroners or constables were charged with misconduct in office, the House could summon them before it for a hearing and sentence them if they were found guilty. Such cases are not often found in the records. It would seem that the Lower House reserved this right more as a threat than as a remedy.

PROVINCIAL COURT

The absence of any records for the period immediately following the settlement of Maryland makes it difficult to say just when a formal court was first established. Perhaps the birth of the court system of Maryland may be traced to the commission granted to Lieutenant General Leonard Calvert in 1637, in which, among other powers, he was given the authority to try all cases except those involving life, member or freehold. In such cases, he was required to have at least two of the members of his Council sit with him. Actually, it was customary for one or more members of the Council to assist him in all cases.

This court seems to have been modeled closely after the English county courts, and was in fact sometimes called a county court,¹⁰⁷ although more often it was referred to simply as a court.¹⁰⁸ As other courts were formed a more distinctive designation became necessary and the title, *Provincial Court*, began to appear in the records.

Having originated as a county court, the Provincial Court continued to have concurrent jurisdiction with the county courts for a number of years. In other words, any suit that could be brought into a county court could also be instituted in the Provincial Court. The county courts however could not try criminal cases

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involving life or member, or civil cases in which the value exceeded 3,000 pounds of tobacco. In 1694, the jurisdiction of county courts in civil cases was extended to those involving 10,000 pounds of tobacco or £50 sterling, but there was still no restriction on cases that could be entered in the Provincial Court. For various personal reasons, many suitors preferred to take their cases to the Provincial Court no matter how small the amount in dispute might be. Therefore in 1709, the Lower House presented it as a grievance that the cost of trying many of these cases exceeded the value in dispute. The following year an act was passed which limited the original jurisdiction of the Provincial Court to cases wherein the debt or damage was not less than £20 sterling or 5,000 pounds of tobacco. This was the limit until 1773 when the county courts were given exclusive jurisdiction in all civil cases in which the value involved was less than £100 sterling or 30,000 pounds of tobacco. They were also given concurrent jurisdiction with the Provincial Court in all criminal cases.¹⁰⁹ Throughout the colonial period the Provincial Court and the county courts had concurrent jurisdiction in the matter of recording conveyances of land, which was made compulsory in 1663.¹¹⁰

Soon after the institution of the crown government, an effort was made to avoid the evil of having the same men occupy the benches of all principal courts of the Province. A commission was issued in 1694 to Robert Smith and twelve other Justices of the Provincial Court,¹¹¹ none of whom were members of the Chancery Court or of the Court of Appeals, which was composed of the Governor and Council. In subsequent commissions the separation was not so complete and members of the Council continued to be appointed to the bench of the Provincial Court until the end of the colonial period. But they now occupied their seats by virtue of their commissions as justices and not because they happened to be Counsellors. In the first half of the eighteenth century the number of justices varied from seven to nine, but a commission issued in 1766 named only five justices.¹¹²

Throughout the existence of the Provincial Court, the keeping of its records was the responsibility of the Provincial Secretary. However, he soon delegated the routine portion of this duty to the Clerk of the Secretary's Office and of the Provincial Court.

CHANCERY COURT

During the earliest years, law and equity cases were tried before the Provincial Court and recorded in the same volumes with little or no discrimination, although there can be no doubt that the colonists were fully cognizant of the distinction between such cases.¹¹³

In England, equity cases were tried in the Chancery Court, a one-man court presided over by the Chancellor. One of the many offices bestowed upon Governor Leonard Calvert by the commission of 1637 was that of Chancellor. As long as the same person held both offices, the question of which officer should preside over the Provincial Court when it considered chancery cases remained in abeyance. But, in 1661, Charles Calvert assumed for himself the office of Governor and permitted the deposed Governor, Philip Calvert, to retain the Chancellorship. It was inconceivable that the Governor, especially a Governor who was destined to become the Lord Proprietary, should assume an inferior place on the bench of the Court; therefore, the Governor continued to preside over the Provincial Court in all cases.¹¹⁴

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The number of Chancery cases being brought into the Provincial Court increased steadily. Finally, in 1669, the Chancery Court became a court in its own right. A separate clerk, Robert Carvile, was appointed for the Chancery Court and designated Register and Examiner in Chancery. Coincident with this appointment, a separate record began to be kept for the Chancery Court. It is true that when Carvile left the office only a year later, both clerkships were again given the same man, but there was this difference. The clerk was consistently called Register in Chancery when performing the duties of that Court and it is apparent in other ways that he was conscious that these duties were distinct from those he performed as Clerk of the Provincial Court. Beginning in 1694, the two offices were separated again and thereafter were always held by different persons.¹¹⁵

From 1669 to 1675, the Chancery and Provincial Courts met frequently, if not regularly, in joint session. Governor Charles Calvert presided over these sessions. Usually the title, "Chief Judge in Equity" was appended to his name, although once in a while he was simply called, "Chief Justice."¹¹⁶ In the absence of the Governor, Chancellor Philip Calvert presided.¹¹⁷

In 1676, shortly after Charles Calvert had returned to England, the Chancery and Provincial Courts began to hold separate meetings. But the two courts continued to have a common membership until 1694, when the Governor and two men who were not Councillors were commissioned as justices of the Chancery Court.¹¹⁸ The number of justices varied from three to seven until 1720. In that year, William Holland was appointed Chancellor without any associate justices and the Chancery Court became a one-man court. Richard Tilghman succeeded Holland and served until 1725. Then Governor Charles Calvert decided to take the profits of the office for himself. Thereafter the Governor invariably reserved the Chancellorship for himself and was always the sole judge of the Chancery Court.¹¹⁹

By an act of Assembly passed in 1715, the jurisdiction of the Chancery Court was limited to cases involving more than 1,200 pounds of tobacco or five pounds sterling.¹²⁰ No maximum limit was ever imposed. Appeals from this Court were permitted on the same basis as those taken from the Provincial Court.

The Chancellor was always custodian of the Great Seal of Maryland and he derived much of his income from the fees he received for signing and affixing the Seal to commissions, patents, and other official documents.

ADMIRALTY COURT

The few admiralty cases tried in Maryland during the first proprietary period were heard by the Provincial Court. On one occasion, at least, the Court met under the style: "Att a Court of Admiralty held at St. John 8 May 1663."¹²¹

During the years 1694-1696, considerable attention and effort was devoted to the establishment of an admiralty court.¹²² In fact for about a year in 1695-1696, there appear to have been two admiralty courts, one for each shore.¹²³ The officers of the Western Shore Court were recommissioned in 1696.¹²⁴ Presumably, they acted for the entire Province, for no further reference to the Eastern Shore Court appears in the records.

How many cases this Court tried or how long it lasted is not known, but a report on the officers of the Province of Maryland prepared in 1715 states

"The Court of Vice Admiralty was formerly held by Commissioners under his late Royal Highness Prince George Lord High Admiral of England, Who

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appointed a Judge Register and Martial, but since his Death that Court has not met, but is Supposed may be again Erected by particular Commissions from the Governor and Vice Admiral of this Province for that Purpose." ¹²⁵

Indication that the Court was eventually reconstituted is found in the commission issued to Daniel Dulany as Judge in 1734 ¹²⁶ and in occasional references to the fees of the officers of the Court. ¹²⁷

No records of the Court antedating 1754 have been found. The single volume of proceedings for the colonial period that has survived begins in that year and shows the Court as being in continuous existence, ¹²⁸ although in 1761 it was referred to as the "Court of Vice Admiralty (which scarcely ever sits)." ¹²⁹ The first entries in this volume record the appointment of a full complement of officers, which may or may not indicate the Court was once again being reconstituted.

PREROGATIVE COURT ¹³⁰

The powers given to Governor Leonard Calvert by the familiar commission of 1637 included jurisdiction over probate affairs. On January 20, 1637/8, Governor Calvert assigned this authority to Secretary John Lewger, appointing him commissioner "in causes testamentary, to prove the last wills and testaments of persons deceased, and to grant admraõn of the estates of persons dying intestate." When Leonard renewed Lewger's commission as Secretary on September 5, 1642, he also named him "Judge of all Causes Testamentary & Matrimoniall." Every subsequent secretarial commission included this responsibility until 1672, when Philip Calvert, in a commission that also named him Chancellor, was appointed "Judge or Commissary General for Probate of Wills." Philip assumed office in April 1673 and from then until the Revolution the Commissary General was the highest probate officer in the Province. Because this was one of the most lucrative offices in the Colony, it was not unusual for a multiple number of Commissaries General to be commissioned jointly. The maximum number in office at one time was in 1722-1724 when there were four Commissaries.

Although the commissions of the Secretaries sometimes called them judges when referring to their probate responsibilities, there was no special probate court until 1670. The probate duties of the Secretary were mainly of a routine nature, such as, proving wills, granting letters of administration, and passing, inventories and accounts. Disputes over estates or complaints against the decisions of the Secretary were carried to the Provincial Court just as any other civil case might be. The first instance of a Secretary presiding over a probate court was on July 30, 1670, while William Calvert was in office. On August 7, 1670, the Lord Proprietary commissioned Sir William Talbot as Secretary. In addition to the usual powers of the office, Talbot was authorized to "issue out Commissions and process in our name and to hear Sentence and declare all matters touching wills Administrations and Inventories and also the Incidents Emergencies and dependencies thereupon and to make and appoint Registers & other Officers in relation to the Probate of Wills and Granting of Administrations in all Counties and places within our said Province." The term, "Prerogative Court" was used to describe the probate court as early as 1671. But it was not until about 1685 that this became the accepted name of the court.

As long as the Secretary was in charge of testamentary business, the person

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who occupied the position of Clerk of the Secretary's Office and the Provincial Court also acted as register in probate matters. After the Commissary General was established as an officer in his own right, he appointed a clerk, who was usually identified by the title, "Chief Clerk and Register of the Prerogative Court." The Register kept the Prerogative Office open daily and performed the routine work of the Court, while the Commissary General held court at least every two months to hear disputes and to review the work of the Register. The procedure for appealing a decision of the Prerogative Court was for the appellant to enter his appeal before the Commissary General and then petition the Lord Proprietary or his Lieutenant to appoint a special Court of Delegates to examine the sentence. A special court was appointed for each appeal.

Because the inconvenience of travel imposed a severe hardship on executors and administrators, the early probate judges adopted the device of issuing a special warrant or commission to some reliable person, often a justice of the county courts. The number of such warrants had so increased by 1692 that an act of certain will, swearing in certain administrators or appraisers or passing certain accounts. The number of such warrants had so increased by 1692 that an act of assembly authorized the Commissary General to appoint a Deputy Commissary in each county. The powers of the Deputy Commissaries were increased from time to time until by 1715 they performed most of the routine probate work and were even authorized to allow the accounts of estates valued at less than fifty pounds sterling. Any controversy had to be decided by the Commissary General.

COUNTY COURT

In December 1637, provision was made for settling minor cases locally on the Isle of Kent by commissioning Capt. George Evelin Commander of the Isle and authorizing him to select six or more commissioners as his advisers and to appoint whatever other officers might be needed for the execution of justice and preservation of peace.¹³¹ The Isle of Kent was erected into a hundred in March 1638/9.¹³² The Commander was given the power of a justice of the peace and instructed to appoint a clerk or register for recording matters pertaining to the hundred court of Kent. By 1642, the Isle of Kent had become a county. It was governed by a commander, who was also designated as chief judge, and three commissioners, a term often applied to court justices in the colonial period.¹³³

The loss of the early records of St. Mary's County and occasional gaps in the provincial records make it difficult to determine how the courts operated. But it seems evident that the fact that the capital of the province was located in St. Mary's County delayed the development of a normal county court there. As long as there were no restrictions on the cases that could be instituted in the Provincial Court, it was perfectly natural that the people of the county should use this court. It appears that one or both of the following procedures may have been followed: (1) The Provincial Court may have considered cases that would normally have originated in a county court in the normal course of business. (2) The Court may have held special sessions during which it acted solely as the county court of St. Mary's County.

At the same time, the other counties of Maryland were also experiencing difficulty in getting their courts organized and keeping them in operation. But finally, in

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1658, a county court was permanently established in St. Mary's County. Eight Commissioners to keep the peace were jointly commissioned and given powers equivalent to those of justices of the peace in England. They were authorized to try any civil case in which the value in dispute did not exceed three thousand pounds of tobacco or any criminal case not involving life or member. Roger Isham was named clerk and keeper of the records and Captain Nicholas Gwyther was appointed Sheriff. Each of the other counties of the Province was likewise assigned a full complement of commissioners and a sheriff.¹³⁴ New commissions were issued for the commissioners of every county in 1661,¹³⁵ and thus, according to Mereness, "in 1658 and 1661, the organization of the county court assumed its final form."¹³⁶

The justices of the county courts were commissioned jointly by the Governor and held their commissions at his pleasure. The number appointed ranged from eight to as high as twenty-eight depending on the size and population of the county. In addition, after 1733 the members of the Council were listed at the head of every commission for a county court. At least four or five of the men commissioned were designated as justices of the quorum and no court could be held unless at least one of them was present.¹³⁷

The jurisdiction of the county courts in civil and criminal cases has already been discussed in the section dealing with the Provincial Court. From 1715, the county courts had exclusive jurisdiction in equity cases in which the value in dispute did not exceed 1,200 pounds of tobacco or five pounds sterling. Beginning in 1763, they were given concurrent jurisdiction with the chancery court in equity cases involving no more than 5,000 pounds of tobacco or £20 sterling.¹³⁸ Aside from their judicial function, the county courts also had certain administrative duties. The most important of these was laying the county levy. In other words, determining what were the legitimate charges against the county and assessing a poll tax on the inhabitants to raise the amount needed to pay these charges. The county levy was collected at the same time and in the same manner as the public levy. The county courts appointed constables, road supervisors, keepers of county standards of weights and measures, and other minor officers. They determined the age of servants and fixed their time of servitude. They had legal custody of orphans, selecting guardians for them or binding them out as apprentices. After 1661, they nominated three persons from whom the Governor selected the county sheriff.¹³⁹

The sheriff has been described as "the county court's chief executive officer."¹⁴⁰ All summons, subpoenas, warrants, writs and other process issued by the county, and incidentally by the other courts of the Province as well, were served by the sheriff, and he also impanelled juries. He was the chief law-enforcement officer of the county. The county prison was in his charge and he was responsible for apprehending persons accused of crimes and for keeping them in custody if they were sentenced to jail. He also enforced other sentences of the court. He supervised the work of the constables in preparing lists of taxables within their respective hundreds as well as in their capacity as law enforcement officers. The sheriff's own financial responsibilities in collecting and paying out the county and public levies have already been mentioned. In addition, he enforced the collection of officers' fees, fines, forfeitures and also the quit-rents, alienation fines and other revenues of the Lord Proprietary. Until 1666 the sheriff or the constable often served as coroner, but a law passed in that year provided for the appointment of a coroner

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in each county.¹⁴¹ Most of the sheriffs found their duties so burdensome that they appointed deputies to assist them.

MINOR COURTS

A number of minor courts had varying periods of existence during the colonial period. The hundred court of Kent has already been mentioned. The hundreds of St. Mary's County no doubt had similar courts. None of the records of these courts have survived and, in all probability, they ceased to exist as soon as the county courts became established.

Although the Lord Proprietary granted at least seventy-four manors in the seventeenth century, the only surviving record of a manor court is the fragmentary proceedings of the court baron and court leet of St. Clement's Manor covering the period, 1659-1672.¹⁴² Thomas Gerrard was the Lord of St. Clement's Manor, which at one time encompassed 11,400 acres. He appointed a steward who supervised the operation of the manor and presided over the manor court when the lord was not present. The court had such other judicial trappings as a bailiff, a constable and petit and grand juries. Only minor cases were tried, such as, fowling without a license, cutting sedge on manor lands and stealing pigs. More serious cases were referred to the county court.¹⁴³

Perhaps the most interesting of the lesser courts were the Mayor's Courts, of which only two are known to have existed, at Annapolis and at St. Mary's City. The Charter of Annapolis,¹⁴⁴ which was granted in 1708, provided that the City be governed by a Mayor, Recorder, six Aldermen and ten Common Councilmen, who were declared to be a body corporate. The Mayor, Recorder and Aldermen were given the powers of justices of the peace within the City limits and any three of them were authorized to hold a Court of Hustings for the purpose of trying violations of the by-laws and ordinances adopted by the Corporation and other minor cases. The Court was empowered to appoint a sheriff, constables and other necessary officers for executing its orders. It also served as a court of record. A good many of the records of the Mayor's Court of Annapolis have survived.¹⁴⁵ The Court was discontinued in 1818.¹⁴⁶

Certain minor judicial functions were performed also by the vestrymen of the various parishes which were erected and regulated by several acts passed from 1692 to 1702.¹⁴⁷ As arbiter of the morals of its parishioners, the vestry could summon persons accused of incontinency before it to show cause why they cohabited together in an unlawful manner and reprimand them if they were found guilty. The vestry could also summon witnesses to testify in such cases. However its only recourse if the couple refused to appear or persisted in their conduct after being admonished was to refer the case to the county court.¹⁴⁸

More important, the Register of the parish was required to keep a register of all births, marriages and burials within the parish. This function had formerly been performed by the clerks of the county courts and was resumed by them in 1777.

CONSTITUTION OF 1776

The Constitution and Form of Government adopted by the Convention on November 8, 1776 was preceded by a Declaration of Rights which contained a number of articles intended to guarantee and protect the rights of individuals.

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Many of these same guarantees were later incorporated in the Bill of Rights of the Federal Constitution. Certain of the other articles were intended to prevent abuses which the colonists had suffered under the proprietary government and these more directly affected the structure of the new government. One of the more persistent complaints of the Lower House had been that the members of the Council, not only held other executive offices, but that they were also the Upper House of the legislature and were often commissioned as judges of the Provincial Court as well. It was now declared "That no person ought to hold at the same time more than one office of profit. . . ." ¹⁴⁹ It was further proclaimed "That the legislative, executive and judicial powers of government, ought to be forever separate and distinct from each other." ¹⁵⁰ While it was deemed "That a long continuance in the first [principal] executive departments of power or trust, is dangerous"; ¹⁵¹ on the other hand, it was considered that "the chancellor and all judges ought to hold commissions during good behaviour" in order to secure their "independency and uprightness." ¹⁵²

As for the Constitution proper, it was only natural, in view of the conditions under which it was drafted, that only those changes were made in the existing structure of government that were considered highly desirable or absolutely necessary. The primary need was to fill the void of authority created when Maryland joined the other colonies in declaring its independence from the rule of the King of England which, of course, meant that of the Lord Proprietary also. In the first two articles of the Declaration of Rights the ultimate source of authority was firmly asserted: "government of right originates from the people . . ." and further "That the people of this state ought to have the sole and exclusive right of regulating the internal government and the police thereof." The problem was how to express this authority. Knowing that most of the benefits gained by the people had been obtained through the efforts of the Lower House in the General Assembly, the makers of the Constitution placed most of their trust in the legislature, the members of which were elected by the qualified voters of the State, either directly as in the case of the House of Delegates or indirectly as in the case of the Senate. The two houses of the Legislature chose by joint ballot the Governor and the members of the Council, and they, in turn, appointed the Chancellor and all justices and judges. Thus, in reacting from the strong executive government of the colonial period, the framers had created a government that was to a large degree dominated by the legislature. In fact, all the officers of the new government whose appointment was a constitutional prerogative of the Governor and Council were, in the first instance, appointed by the Legislature. Other changes affected by the new Constitution will be discussed in the appropriate sections. It need hardly be mentioned that those offices and agencies, such as, the Secretary, the Agent and Receiver General and the Board of Revenue which were closely associated with the Lord Proprietary were discontinued.

GOVERNOR AND COUNCIL

As was the case during the colonial period the executive branch of the new government was headed by the Governor and Council. The Governor was elected annually by the Legislature ¹⁵³ and could continue in office no longer than three years in succession. ¹⁵⁴ The five members of the Council were also chosen by the

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Legislature. Any three of them constituted a board for conducting business. The Governor presided over the meetings of the Council, but voted only to break a tie. In his absence the first named of the Council presided. In case of a vacancy in the Council, the remaining members could select a person to fill the unexpired term. The Council appointed a clerk to record its proceedings.¹⁵⁵

The influence and power of the Governor and Council, already greatly diminished by the end of the colonial period, reached a low ebb under the Constitution of 1776. Although the Governor, with the advice and consent of the Council, continued to appoint the Chancellor, all judges and justices, the Attorney General, naval officers, military officers, registers of the land office, surveyors and all other civil officers, except assessors, constables and supervisors of roads, his control over these officers was considerably weakened by the fact that many of them held their commissions during good behavior and could only be removed upon conviction of misbehavior in a court of law. He could however suspend or remove military officers or any civil officers who were appointed for a limited term.¹⁵⁶ The Governor and Council were also empowered to embody the militia, but once embodied the Governor alone commanded them, although it was not intended that he do so in person unless so advised by the Council. During the recess of the Assembly the Governor could lay embargoes on shipping for periods of thirty days or less in any one year. He could also grant pardons and reprieves to criminals.¹⁵⁷

The Governor and Council were almost completely deprived of any legislative powers. If the Senate and House adjourned to different days the Governor could set the date of their next meeting, and with the advice of the Council, he could, if necessary, call the Assembly into session. But otherwise, he could not adjourn, prorogue or dissolve it at any time.¹⁵⁸ The Constitution stipulated that the Governor should sign and affix the great seal to bills passed by the Assembly,¹⁵⁹ but this was only a perfunctory duty, and did not imply the right to veto such bills.

To illustrate the relatively low esteem with which the office was regarded, it might be noted that Thomas Johnson, the first State Governor, later declined to be reelected because he believed "that in the legislative halls or on the bench were open the only opportunities to blaze the way for more perfect government, and that in the executive office there was presented little chance to do more than represent the commonwealth socially." In fact it often happened during the late eighteenth century that the person elected Governor declined to serve.¹⁶⁰

Gradually however, the office of Governor gained in prestige and importance. As new offices were created by the Assembly, the appointments were made by the Governor, with the advice of the Council or later the Senate. Thus, in 1789 the Governor and Council were authorized to appoint inspectors of tobacco: at first, from lists of nominees submitted to them by the justices of the county courts, but later without any limitation.¹⁶¹ When the State Penitentiary was established in 1811, the Governor and Council were authorized to name the directors.¹⁶² The State Librarian created in 1827 was similarly appointed.¹⁶³ During the decades before 1850, the General Assembly, constantly aware of the need for careful inspections and exact measurements, created a number of officers whose function it was to protect buyers from unscrupulous dealers and merchants. Without attempting to make a complete list of such offices one might mention inspectors of salted fish, inspectors of flour, inspectors of lumber, inspectors of green hides and skins,

inspectors of shingles, guagers of barrels, wood corders and coal measurers. Most of these appointments were made by the Governor, although some of them were made locally. These positions were usually in great demand and the control of them greatly increased the Governor's political strength.

The Governor's pardoning power was increased by an act of 1782¹⁶⁴ which authorized him, with the advice of the Council, to remit fines and forfeited recognizances provided it was so recommended by at least one judge of the General Court or three justices of a county court. In 1787, the Governor was authorized, upon application, to issue commissions of oyer and terminer and gaol delivery for the trial of crimes and misdemeanors committed in any county if he deemed it necessary.¹⁶⁵ In most instances, such commissions were issued to expedite trial because the insecurity of the local jail or the indignation of the populace made it dangerous and unwise to delay trial until the next regular session of the county court. This was a power held by the colonial governors, but omitted in the Constitution.

In 1795, John Hoskins Stone became the first Governor to address the Legislature at the commencement of a session for the purpose of reporting on the general condition of the State and suggesting matters which might be acted upon. Previous to this the Governors had only transmitted messages to the Assembly to call attention to specific situations or problems. Evidently Stone had presented his message with great skill and tact, for what might have been considered an unwarranted interference in the affairs of the legislature by the executive elicited this comment from the Assembly: "Although not sanctioned by precedent, or enjoined by the constitution, such communications certainly have their use, and we wish that future governors may follow the laudable example whenever it may seem expedient to submit to the legislature such matters as they shall judge deserving its attention."¹⁶⁶ From then on, the Governor's message became an established feature of each meeting of the General Assembly and enabled him to exercise considerable influence on legislation.

The composition of the executive department was thoroughly revised by a constitutional amendment confirmed in 1838.¹⁶⁷ The Governor's Council and the Clerk of the Council were abolished and the executive power vested solely in the Governor. He was empowered to nominate and, with the advice and consent of the Senate, appoint all officers of the State whose appointment was not otherwise provided for by the Constitution or by law. He could also fill any vacancy in such offices during the recess of the Senate, subject to ratification by the Senate when it convened. Among the officers to be appointed by the Governor was a Secretary of State, who was to hold office until a successor was appointed. His principal duty was to keep a record of all official acts and proceedings of the Executive Department.

The amendment further provided for the popular election of the Governor and his term of office was extended from one to three years, but he could not succeed himself. The State was divided into three gubernatorial districts and provision was made for electing a Governor from each of these districts every third election.

Under the Constitution of 1851, many of the officers who had formerly been appointed by the Governor were made elective. This, of course, considerably reduced the Governor's influence over the judiciary, and even over the Executive

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Department, of which he was the nominal head. The Governor's right to inform the Legislature of the condition of the State and to recommend such measures as he deemed necessary was already well established; but it was now made mandatory for him to do so. The term of office was increased from three to four years. He was also required to examine semi-annually the accounts and proceedings of the newly created Comptroller and State Treasurer. The Secretary of State was eliminated from the order of succession to the Governorship.¹⁶⁸

The Constitution of 1864 made few changes in the Executive Department. The Governor's qualifications remained the same, but the cumbersome requirements regarding gubernatorial election districts were eliminated. The Governor's power of appointing and removing justices of the peace was restored, and he was also authorized to appoint a Superintendent of Public Instruction, who was to hold office for four years and whose first duty was to report to the General Assembly a uniform system of public education. He also served on the State Board of Education with the Governor, Lieutenant Governor and Speaker of the House of Delegates.

The creation of the office of Lieutenant Governor was one of the most unusual features of this Constitution. He was elected at the same time the Governor was and had to meet the same qualifications. By virtue of his office, the Lieutenant Governor was president of the Senate, but voted only to break a tie. As would be expected, he was first in the order of succession if the Governor's office became vacant. The office of Lieutenant Governor was not among those continued by the Constitution of 1867.

A Board of Public Works composed of the Governor, Comptroller and Treasurer was constituted to hear and determine matters affecting all public works in which the State might be interested as stockholder or creditor and to appoint directors to represent the State at meetings of stockholders. This Board replaced the Commissioners of Public Works who had been established by the Constitution of 1851.¹⁶⁹

ATTORNEY GENERAL

The Constitution of 1776 authorized the Governor and Council to appoint the Attorney General, who was to serve during good behavior, and the office was continued with hardly any change.¹⁷⁰ The practice of appointing deputies for each county was also continued, although without specific authorization.

In 1818, an act amending the Constitution so as to abrogate all parts relating to the office of Attorney General was confirmed. At the same time, this office was made a statutory one with essentially the same duties as before, i.e., to prosecute and defend on the part of the State any case in which it was involved and upon request to advise the General Assembly, Governor and Council, and Treasurers. But now district attorneys were to be appointed for each judicial district and for Baltimore City. They were to exercise the same powers and duties which the deputies formerly had.¹⁷¹

Four years later, in 1822, the office of district attorney was abolished and the Attorney General was again permitted to appoint deputies.¹⁷²

The Constitution of 1851 failed to renew the office of Attorney General, but provided instead for the election of a State's Attorney in each county and in Baltimore City. They were to have four-year terms and perform such duties as

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were prescribed by law for the Attorney General and his deputies. It was rumored at the time that the reason the office was eliminated was the Convention Delegates had personal objections to the leading candidate for appointment. The office of Attorney General was reestablished by the Constitution of 1864, but was made elective, the term being four years. The State's Attorneys continued as before.¹⁷³

LAND ADMINISTRATION

From the beginning of the Revolution, it was readily apparent that one of the inevitable consequences of an American victory would be the loss of the Proprietor's territorial rights in Maryland. In the Constitution of 1776, steps were taken to prepare for this eventuality. The Governor and Council were authorized to appoint two Registers of the Land Office, one for each shore, who were to be removable "only for misbehavior, on conviction in a court of law." It was also directed that short extracts of the grants and certificates of the land on the two shores be made in separate books at public expense in a manner to be stipulated by the General Assembly.¹⁷⁴ The purpose of this, of course, was to protect the titles of those who already held land.

However, it was not until the confiscation acts of 1780 and 1781 had been passed that the new government actually assumed legal possession of the proprietary land holdings, although such assumption was implicit in many of its acts, and also in the several laws which promised bounties of land to recruits for the army. The act of 1781 established a land office on each shore under the direction and care of the Register of the shore. It also authorized the Governor and Council to appoint an Examiner General who was to examine and pass on all certificates.

The procedure prescribed for the patenting of land was basically the same as that of the colonial period. The Registers were empowered to "grant warrants for the resurveying, proclaiming, or escheating any land within any of the counties on their respective shores" and also "on the order or titling of the treasurer of their shore, [to] issue common or special warrants of vacant cultivation for the surveying of any vacant land." The surveyors, who were appointed for each county by the Governor and Council, executed the survey and returned the certificate to the Register of the Land Office for the Western Shore who delivered it to the Examiner General. If the Examiner found it imperfect he returned it to the surveyor. If he approved the certificate, the Examiner sent it back to the Register, who made certain that the purchase or caution money had been paid to the Treasurer of the Western Shore, and then drew up the patent. After the patent had been approved and attested by the Chancellor, it was signed by the Governor and the Great Seal of the State was affixed to it. If any dispute arose during this procedure, it was heard and determined by the Chancellor who was thus, in effect, the judge of the Land Office.¹⁷⁵

Under this arrangement, the Land Office for the Eastern Shore had no function other than the issuance of warrants. In 1795, the Governor and Council were authorized to appoint a Judge of the Land Office and also an Examiner for the Eastern Shore. They were given equal authority with their Western Shore counterparts in the granting of land. The only difference being that the party aggrieved by any decision of the Judge of the Land Office for the Eastern Shore had the right of appeal to the Chancellor.¹⁷⁶ Hardly any surplus land remained on the Eastern

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Shore and it is evident that this move was little more than a gesture to its inhabitants.

By 1843, the Land Office for the Eastern Shore had been abolished and its duties and records assigned to the officers on the Western Shore.¹⁷⁷ Under the Constitution of 1851, the offices of Register and the Examiner General were abolished and their duties as well as those of the Chancellor, as judge of the Land Office, were consolidated into the hands of a single officer known as the Commissioner of the Land Office. The Commissioner was elected by popular vote for a six year term.¹⁷⁸ In 1853, the court of the Commissioner of the Land Office was declared to be a court of record, thus remedying an omission in the Constitution. By virtue of an act adopted in 1862, the Commissioner was made keeper of the records of the then defunct Chancery Court. The Constitution of 1864 raised the annual salary of the Commissioner of the Land Office to two thousand dollars. It required him to report all the fees he collected to the Comptroller and to pay them into the Treasury, but otherwise made no changes in the office.¹⁷⁹

FINANCIAL STRUCTURE

As soon as it became evident that armed conflict could no longer be averted, the Provincial Convention began searching for means of raising the money needed to conduct a war. The uncertain basis on which the authority of the Convention was founded would have made the imposition of taxes impractical and difficult, if not impossible, to collect. Therefore the Convention resorted to the time-honored expedient of issuing paper money. In 1775 and again in 1776, emissions of bills of credit amounting to over half a million dollars were authorized.¹⁸⁰ The bills were delivered to Thomas Harwood, Jr., who was designated Treasurer of the Western Shore, and to William Hindman, Treasurer of the Eastern Shore. The treasurers were to disburse the bills upon order of the Convention or of the Council of Safety.

The custom of having a treasurer on each shore was continued by the Constitution of 1776 and the same men were reappointed. As before, their principal function was to receive and disburse public funds. It was inevitable that the Western Shore Treasurer, being conveniently located at the seat of government in Annapolis, should conduct the greater part of the fiscal business of the State. As a measure of comparison, the Eastern Shore Treasurer, in 1779, received a smaller annual salary than either the deputy or the clerk of the Western Shore Treasurer. By 1843, the usefulness of the Eastern Shore Treasurer, even as an agent, had diminished to such an extent that the office was abolished altogether, and his duties and records were turned over to the Western Shore Treasurer.¹⁸¹

By a resolution of March 31, 1778, the House of Delegates determined to appoint an Auditor General to audit the accounts of the State. Any account passed for payment by the Auditor was delivered to the Governor and Council who drew an order upon one of the treasurers for the amount due. Such orders had to be countersigned by the Auditor before payment could be made. After the accounts of the Revolution had been settled, the usefulness of this office diminished steadily and its business became largely perfunctory. Finally, in 1828, the office was abolished and the records and duties were turned over to the Clerk of the Council.¹⁸²

In 1781, the financial situation of the State was so desperate and confused that a special officer called the Intendant of the Revenue was appointed to attempt to

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restore order. The authority given him was practically unlimited. He supervised the work of the Treasurers and the Auditor General, and no withdrawals could be made from the Treasury unless he had countersigned the account or order. In fact, from 1783 to 1786, the power to draw orders on the Treasury was temporarily transferred from the Governor and Council to the Intendant. He supervised the Commissioners of confiscated British property and the Commissioner to settle and adjust the pay due to the officers and soldiers of Maryland in the service of the United States. He directed the raising of supplies, both the Commissary of Stores and the Commissary of Provisions being under his control. In an effort to improve collections of the property tax, the Intendant was placed in charge of this activity too.

All in all, the powers of the Intendant were so extraordinary that his term of office was limited to one year. The office was renewed annually however until 1786, when it was discontinued and the Governor and Council authorized to appoint an agent to complete the business of the Intendant and the Commissioners of confiscated British property.¹⁸³

Even under the best of circumstances, the government established by the Constitution of 1776 would have had trouble financing its operations. For one reason or another, the sources of revenue which had proven most fruitful under proprietary rule were unavailable. Poll taxes were prohibited by the Declaration of Rights. Quit-rents also would have violated the spirit, if not the letter of the Constitution. The blockade imposed by the British Navy virtually eliminated the income from customs duties and tonnage duties, and the receipts from such sources as licenses, fees and fines were considerably reduced. Moreover, the problem of redeeming the bills of credit emitted by the Convention had to be met somehow.¹⁸⁴

The Declaration of Rights had set forth the basic tenet that every person "ought to contribute his proportion of public taxes, for the support of government, according to his actual worth in real or personal property."¹⁸⁵ Hence the General Assembly early turned to such a tax.¹⁸⁶ Five Commissioners of the Tax were appointed for each county and charged with the responsibility of supervising the evaluation of property within their respective counties. They met early in each year and appointed Assessors for each tax district. After the Assessors had ascertained the value of the property within their districts, they delivered their assessment lists to the Commissioners who made them available to anyone who wished to see them and heard and determined any complaints that might be made. The final assessment lists were turned over to the Collectors appointed for each county by the Commissioners. The Collectors, who were at first the sheriffs, were required to account to the Commissioners for the monies they received and were allowed a commission which varied from two and one-half to six per cent. The Commissioner forwarded the balance to the State Treasurers.¹⁸⁷

In 1780, the justices of the county courts were "authorized and required, at their respective June or August courts, to adjust the ordinary and necessary expenses of their several counties, . . . and for payment thereof . . . to impose an assessment or rate on all property within their county sufficient to defray such county charge."¹⁸⁸ This meeting of the justices came to be known as the Levy Court.¹⁸⁹ Later, in 1799, the Governor and Council were directed to designate

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seven of the justices in each county as Justices of the Levy Court.¹⁹⁰ The other justices were specifically excluded from this court.

The Legislature had failed to impose a State assessment on property in 1786 and so for a period of over fifty years this field of taxation was the exclusive property of the counties. The Levy Courts determined the necessary expenses of the counties, including allowances for the poor and for public roads, and imposed the assessment. They also appointed the Collectors. The clerks of the county courts kept an account of the assessment and how it was disposed in special books. They transmitted copies of the assessment to the Governor and Council and to the Collectors. The Commissioners of the Tax continued to supervise the evaluation of property and to appoint the Assessors. In addition, the Levy Courts also assumed the other administrative functions formerly performed by the county court, including the appointment of constables and overseers of roads.¹⁹¹

As early as 1827, the Levy Courts and the Commissioners of the Tax began to be replaced by boards of County Commissioners.¹⁹² But it was not until 1851, when the Constitution made it compulsory, that the last of the Levy Courts were replaced.¹⁹³ At this time, the County Commissioners for all counties were made elective.

At the outset, the property tax proved difficult to collect and receipts soon lagged. The other money-raising schemes of the Legislature, such as the short-lived tax on salaries¹⁹⁴ and the confiscation of British property also failed to produce much ready cash. Consequently the State had to depend largely on credit for financing its expenses during the Revolution. In 1778, the public Treasurers were authorized to give interest-bearing certificates of debt to such public creditors as would receive them.¹⁹⁵ It was not unusual also for the commissaries of supplies simply to acknowledge the receipt of so many bushels of corn or pounds of pork, leaving the value to be settled later.

The end of the War found the economy of the State seriously disrupted and the Treasury not only empty, but in a remarkable state of confusion. The various media used in expressing value, such as, specie, bills of credit, certificates of debt and specifics, made even the task of stating the public accounts complicated and laborious.¹⁹⁶

Gradually economic conditions improved, and as they did, more taxpayers were able to make their payments regularly and the revenue from business licenses increased. The resumption of trade brought in a tidy sum from port duties until the State was denied this source by the adoption of the Federal Constitution.¹⁹⁷

But the most important single factor in effecting the financial recovery of the State was the passage of the Funding Law in 1790. By virtue of this law Congress assumed practically all of the burden of paying for the War. Maryland's benefit from the law amounted to nearly one and a half million dollars, much of which remained in the Treasury in the form of interest-bearing stock of the United States Government.¹⁹⁸ In 1805, after long and complicated negotiations, Maryland obtained a favorable settlement in the Bank Stock controversy. The stock which was thus regained had increased enormously in value and was sold for \$648,484.30, of which about \$100,000 had to be paid for expenses. The balance was invested in United States stock.¹⁹⁹

During this period, the possession of large quantities of capital stock placed the

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State in the enviable position of being able to pay practically all of its governmental expenses out of the interest it received. Aside from the usual license fees, the only tax levied at this time was the one on banking capital in 1814.²⁰⁰

Within a few years after the end of the War of 1812, the State's financial position began to deteriorate. Apart from the cost of the War itself, there were increasing expenses of government due partly to expanding functions of the Executive Department, but especially to the generosity of the Legislature in making appropriations. Examples of the diverse projects that engaged the attention of the Assembly are the efforts to establish public schools, the operation of the State Penitentiary and the expensive attempt to colonize the free Negroes of the State.²⁰¹

But far exceeding all other undertakings in disastrous consequences was the program of internal improvements upon which the State was launched as early as 1800. Beginning in 1826, the State's commitments to such projects became increasingly heavy, reaching a peak in 1836 when a loan of \$8,000,000 was authorized to enable the State to subscribe to the stock of the Chesapeake and Ohio Canal Company, the Baltimore and Ohio Railroad and several others. By 1840, Maryland had an accumulated debt of approximately \$15,000,000 and such poor credit that further borrowing was no longer feasible. Very few of the projects had reached any substantial degrees of completion and none of them had returned more than a dribble of revenue to the State Treasury. So desperate was the financial plight of the State that from 1842 to 1848, it could not even pay the full amount of the interest on its obligations.²⁰²

Meanwhile, the Legislature had reluctantly faced up to the necessity of imposing additional taxes. Corporations especially were taxed in many ways. Banks were required to pay a bonus tax for the privilege of having their charters extended in 1825. A tax of two percent was set on all premiums collected by foreign insurance companies on policies written within the State in 1840. A year later a tax was levied on the stocks and bonds of all corporations operating in Maryland, and collected from the corporation itself. Also in 1841, a State tax on property was imposed again for the first time in fifty-five years. Beginning in 1842, salaries and other forms of income, other than those derived from the ownership of property were made subject to taxation. About the same time, brokers and agents of foreign insurance companies were required to take out annual licenses. Even a stamp tax was imposed in 1845. With the help of these and other taxes, the Treasury was able to resume payments on the public debt in 1848 and eventually the debt was paid in full.²⁰³

The treasury department of the State was reorganized by the Constitution of 1851. The office of Comptroller of the Treasury was created and he was assigned the "general superintendence of the fiscal affairs of the State." He has to be elected by the voters every two years. The Treasurer was appointed by the two houses of Assembly. He received and disbursed all public funds upon warrants drawn by the Comptroller. The Treasurer also took over the duties and records of the Commissioner of Loans, an office which had been established by an act of 1834, for the purpose of keeping a record of the owners of State stock. This was the beginning of the modern treasury department whose functions and development will be discussed in the chapter which follows.²⁰⁴

LEGISLATURE

The Legislature created by the Constitution of 1776 was bicameral. The House of

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Delegates, composed of four delegates elected annually from each county and two each from Annapolis and Baltimore, resembled its predecessor, the Lower House, in many respects.²⁰⁵ The Senate, on the other hand, bore little similarity to its colonial counterpart, the Upper House, being divorced from all connection with the Governor and Council and the Court of Appeals. It was composed of fifteen members, nine from the Western Shore and six from the Eastern Shore, who were chosen at large every five years by a college of electors of the Senate elected especially for that purpose by the voters.²⁰⁶

Apparently, the framers of the Constitution had not been able to overcome completely, their distrust of the upper branch of the legislature, for certain powers were vested exclusively in the House of Delegates. The House alone appointed the two Treasurers of the State and the Commissioners of Loans. All money bills were to originate in the House, although it was forbidden to annex to such bills anything not directly related thereto; bills imposing duties to regulate commerce or inflicting fines for the reformation of morals, or to enforce the execution of laws were not to be considered money bills. The House was also authorized to examine and pass all accounts of the State, relating either to the collection or expenditure of public revenue or to appoint auditors to state and adjust the same. It could call for all public or official papers and records and send for persons whom it wished to question concerning affairs relating to the public interest. It could also direct that office bonds be sued for breach of duty.²⁰⁷

The Senate was given no special authority at first, but after the Governor's Council was abolished in 1838, the Senate took over the function of advising the Governor with regard to certain appointments and of confirming them after they had been made. Under the Constitutions of 1851 and 1864, both houses were assigned equal power in the introduction and passage of legislation.²⁰⁸

The legislative powers of the General Assembly under the Constitution of 1776 were limited only by those clauses of the Declaration of Rights which were inserted for the purpose of guaranteeing the rights of individuals. For example, no law interfering with freedom of religion could be passed.²⁰⁹ Nor could laws of attainder of treason or *ex post facto* laws be enacted.²¹⁰ The establishment of monopolies and the creation of titles of nobility were also prohibited.²¹¹ Otherwise the authority of the Assembly to enact legislation was broad and almost completely unfettered, for the power of vetoing laws had been deliberately denied to the Governor.

Vestiges of the judicial powers of the colonial Assembly may be seen in the clauses which permitted the House of Delegates to "inquire, on the oath of witnesses, into all complaints, grievances, and offences as the grand inquest of this State"; and to "commit any person, for any crime to the public jail . . . till he be discharged in due course of law." Further, both branches of the legislature could punish by imprisonment any person guilty of any contempt by disorderly behavior or by any obstruction to their proceedings, or who was guilty of breach of privilege by arresting any of their members while the Assembly was in session.²¹²

One of the consequences of the adoption of the Federal Constitution was that the states surrendered certain prerogatives which they had exercised themselves before they agreed to associate themselves into a republic. Among the powers and duties reserved for the Federal Congress were the making of treaties and alliances, the regulation of commerce with foreign nations, the imposition of customs duties,

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the declaration of war, the coinage of money, the establishment of postal services and the naturalization of citizens. Certain other powers, notably the imposition of taxes and the organization of militia were to be exercised jointly by Congress and the state legislatures.²¹³ The Assembly did acquire the important duty of electing the two Senators who represented Maryland in Congress. By an act of 1809,²¹⁴ it was required that one Senator be a resident of the Western Shore and the other of the Eastern Shore. It was not until the Seventeenth Amendment to the Federal Constitution was adopted in 1913 that United States Senators were popularly elected. Representatives to Congress and Presidential electors were elected by the people from the very beginning.

During the first half of the nineteenth century the Assembly dealt with many problems. Some indication of the scope of its interests may be gleaned from a list of the standing committees appointed by the two houses in 1828. The House had standing committees on Ways and Means, Elections and Privileges, Grievances and Courts of Justice, Claims, Internal Improvement, Pensions and Revolutionary Claims, Education, Militia, Insolvency, Divorces and Crimes and Punishments.²¹⁵ The Senate had committees on Pensions and Revolutionary Claims, Ways and Means, Internal Improvement, Out Pensioners, Invalid Deeds, Engrossed Bills and one for the Relief of Insolvent Debtors.²¹⁶ It will be observed that many of these related to matters of purely private interest. Until 1842, for example, the only way married couples could be divorced was by a special act of Assembly. The courts were then given concurrent jurisdiction.²¹⁷ With certain minor exceptions affecting churches, no business or organization could be incorporated except by act of Assembly. Many laws confirming titles to land were passed and pensions were granted individually by resolution of the Assembly. It was during this period also that the Legislature rashly engaged the credit of the State in support of a fantastically expensive program of public improvements which eventually brought Maryland to the verge of ruin. Only the courage and ability of Governor Thomas G. Pratt prevented the repudiation of the public debt and restored the state's financial stability.²¹⁸

As a result, when the Constitution of 1851 was adopted, the power of the Legislature to contract debt was greatly restricted and it was specifically directed not to give or loan the credit of the State "to or in aid of any individual, association, or corporation, nor . . . to involve the State in the construction of works of internal improvement."²¹⁹ The Assembly was also forbidden to grant divorces or to authorize lottery grants.²²⁰ Corporations were to be formed under the general laws and not be created by special act, except for municipal purposes or where the object of the corporation could not be attained under general laws. No person was to be imprisoned for debt, thus relieving the Assembly of the necessity of considering the many petitions formerly filed to secure the release of languishing debtors. In 1838, the Constitution had been amended so as to prohibit the passage of any law abolishing the relation of master and slaves, and the same provision was made in 1851.²²¹ For obvious reasons, this provision was omitted from the Constitution of 1864. Otherwise the powers of the Legislature were not greatly changed.

Under the Constitution of 1776, the General Assembly was to meet annually on the first Monday in November and more often if necessary.²²² Each House selected its own officers and established its own rules of procedure.²²³ In 1813, the Assembly

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began meeting on the first Monday in December. The Constitution of 1851 changed the date of meeting to the first Wednesday in January.²²⁴ Meanwhile the Legislature had begun meeting on a biennial basis in 1849.²²⁵

However democratic the Constitution of 1776 may have seemed when compared to the provincial charter, it eventually became apparent that there was much room for improvement in this respect. Only delegates and sheriffs were elected directly by the people and even so the property requirements severely limited the number of persons eligible to vote. Consequently, the people soon began to demand a greater voice in their government. In 1800, complaints that many citizens found it inconvenient to come to a single central polling place for elections and resulted in a constitutional amendment dividing the counties into several election districts.²²⁶ Property requirements for voters were eliminated by a constitutional amendment adopted in 1803 which also provided that the votes should be made by ballot, thus replacing the *viva voce* manner of voting established by the Constitution.²²⁷ By 1810, the Constitution had been so amended as to eliminate all property qualifications, whether for voters, office holders, members of the legislature or electors of the Senate.²²⁸

Even this did not completely placate the advocates of greater democracy and eventually, the Assembly was compelled to adopt the constitutional amendment of 1838,²²⁹ which encompassed so broad a field that it was almost a constitution in itself. It provided that beginning in 1838, the Senate was to be composed of twenty-one members, one from each county and Baltimore City. The Senators were to be popularly elected by those persons who were qualified to vote for Delegates and in the same manner. The terms of the Senators were increased to six years, with provisions for staggered terms so that one-third of the total would be elected every two years.

In the House, the practice of allowing each county and Baltimore City to have the same number of delegates, four, was now changed to require that the representation of each county be based on its population as given in the federal census of 1840. The number of Delegates allowed each county varied from three for those with a population under 15,000 to six for those with over 35,000. Baltimore City was given the same number of Delegates as the largest county, but Annapolis was to have no further representation after 1840, thus symbolizing the change in the fortunes of the two cities. The steady growth in population caused frequent revisions of the figures listed in the act. But the principle of representation on the basis of population has never been changed.²³⁰

Effective in 1847, the terms of Delegates were increased to two years.²³¹ They were not affected by the Constitution of 1851, but the terms of Senators were reduced to four years, on a two-year rotation basis.²³² Thus, every two years the voters elected a complete House of Delegates and half a Senate. The Constitution of 1864 did not alter this arrangement. This Constitution clearly reflects the bitter feeling engendered during the Civil War. Its most controversial clauses required that persons who had engaged in open hostility to the United States or supported in any way the Confederate cause were not entitled to vote or hold office. It was this section that caused a new constitution to be adopted only three years later. One permanent benefit was obtained however in that the Constitution of 1864

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required the Assembly to provide for the uniform registration of voters; the first time this had ever been done.²³³

JUDICIARY

The transition from provincial to state government brought about surprisingly little modification in the structure of the courts of Maryland. As the late Judge Carroll T. Bond has pointed out, "After the Revolution as before there were: . . . a Court of Appeals, a general trial court, . . . a Chancellor and a Court of Chancery, a Court of Admiralty and the several county courts."²³⁴ The only court abolished was the Prerogative Court which was replaced by a system of orphans' courts.

However the framers of the Constitution of 1776 did take advantage of the opportunity to remedy certain evils which had caused frequent complaints. In addition to separating the legislative, executive and judicial powers of government, they further declared that "the chancellor and all judges, ought to hold commissions during good behavior," and that they should be paid "salaries liberal, but not profuse," but that they should not "hold any other office, civil or military, or receives fees or perquisites of any kind."²³⁵

COURT OF APPEALS

The Constitution failed to specify how many judges should be appointed to the Court of Appeals, but after some debate and delay five judges were commissioned in 1778.²³⁶ The number was reduced to three by an act of 1801.²³⁷ In compliance with the provisions above, the judges held no other offices and were not associated in any way with the Governor and Council or the upper house of Assembly, a considerable departure from the colonial Court of Appeals. The Court sat at Annapolis in May and October until 1789; then the terms were changed to June and November.²³⁸ The Judges appointed the Clerk of the Court.

In 1806, Maryland's courts underwent a major reorganization. The counties were grouped into six judicial districts and a chief judge and two associate judges were appointed in each district by the Governor and Council. A Court of Appeals, composed of the chief judge of each of the six districts, was established on each shore, with the same judges sitting for both courts. The Eastern Shore Court met at Easton on the second Monday in June and December and the Western Shore Court met at Annapolis on the third Monday of the same months. The Judges appointed a clerk for the court of each shore.²³⁹

All appeals remaining on the dockets of the Court of Appeals and the General Court were transferred to the Court of Appeals of their respective shores. The court proceedings, land records, abstracts of land records, and other records of the General Court of each shore were also distributed to the Clerk of the Court of Appeals of the corresponding shore. In addition, the Clerk of the Western Shore Court of Appeals was assigned custody of the records of the previous Court of Appeals and of the recorded and engrossed laws, which were formerly kept in the office of the Western Shore General Court.

The Constitution of 1851 decreed that there be only one Court of Appeals which was to sit at Annapolis. The number of judges was reduced to four, one of whom was to be elected from each of four districts into which the State was

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divided for this purpose. The judges were elected for ten-year terms by popular vote, and the Governor with the consent of the Senate designated one of them as Chief Justice. The judges had no trial court duties, but were judges of the Court of Appeals only. The Court appointed its Clerk for a six-year term, but could reappoint him as often as it desired. The court terms were set for June and December.²⁴⁰

An interesting and important innovation was the constitutional provision that a written opinion should be filed for each case decided. Such opinions had begun to be filed as early as 1806, but only sporadically. It was further required that provision be made by law for the publication of reports of cases argued and determined by the Court. The office of State Reporter was created to carry out the provision and the *Maryland Reports* have been published ever since.²⁴¹

The Constitution of 1864 made little change in the Court of Appeals, although it did increase the number of judges to five and revised the appellate districts of the State accordingly. The terms of court were shifted to April and October.²⁴²

GENERAL COURT

The Constitution of 1776 directed "That three persons of integrity and sound judgment in the law, be appointed judges of the court now called the Provincial Court; and that the same court be hereafter called and known by the name of the General Court."²⁴³ Probably as a concession to the advocates of the localization of justice, the Court was divided into a General Court for the Eastern Shore which sat at Talbot Court House (now Easton) in April and September, and a General Court for the Western Shore which sat at Annapolis in May and October. A Clerk was appointed for each shore²⁴⁴ and separate records were kept by them. The sheriffs of Talbot and Anne Arundel counties served as sheriffs for the General Court of their respective shores. Thus, aside from the fact that they had common judges, the two sections of the Court were completely independent.

The jurisdiction of the General Court was the same as that of the Provincial Court, and included the hearing of appeals from county courts. The Constitution required that every law passed by the General Assembly be recorded in the General Court Office of the Western Shore.²⁴⁵ The engrossed copies of the laws were also retained by the Court.

Although not specifically authorized to do so, the General Court, following the practice of the Provincial Court, acted as a court of record. In 1785, some doubt arose as to the validity of deeds acknowledged before justices of the Provincial or General Courts or of deeds acknowledged before justices of a county court, but recorded in the higher courts. As a result an act was passed declaring such deeds "good and available in law" and permitting deeds to be acknowledged before the judges of either the General Court or the county court of the county in which the land was located, and also to be recorded in either court.²⁴⁶ The same act provided further that after the clerk of every county court had recorded a deed, he must, before delivering the original deed to the grantee, record the substance of the deed in a record book to be kept in his office. Copies of these abstracts of deeds were to be transmitted to the Clerk of the General Court. The purpose, of course, was to provide insurance copies in case the recorded copies in the counties were lost or destroyed.

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The General Court enjoyed great prestige. In fact most contemporary writers considered it more important than the Court of Appeals.²⁴⁷ But as the population of the State became more widespread, an increasingly large proportion of litigants found it inconvenient to attend the sessions at Annapolis or Easton and expensive to support the cost of transporting and keeping witnesses at these places, sometimes for weeks. There was a demand for decentralization and for increasing the jurisdiction of county courts. As early as 1796, a proposal to abolish the General Court was defeated in the Legislature. But the opposition increased and finally the loyal supporters of the Court were overridden. The General Court was abolished in 1806 and the county courts became the highest courts in which law cases could be instituted. The appellate jurisdiction formerly exercised by the General Court and its records were taken over by the Court of Appeals.²⁴⁸

CHANCERY COURT

The organization of the Chancery Court as it existed at the close of the colonial era was little affected by the Constitution of 1776 which provided that "one person of integrity and sound judgment in the law, be appointed Chancellor" by the Governor and Council.²⁴⁹ In addition to his duties as the judge of the Chancery Court, the Chancellor was made keeper of the Great Seal of the State and was to affix it "to all laws, commissions, grants, and other public testimonials," other than military commissions, as had been the previous practice.²⁵⁰ The Register of the Chancery Court was also appointed by the Governor and Council.²⁵¹ At first he served during good behavior, but by the constitutional amendment of 1838 his term of office was limited to seven years.

The Chancery Court met four times a year; its first recorded meeting being held on May 18, 1778, with John Rogers presiding as Chancellor.²⁵² The jurisdiction of the Court in equity cases was essentially the same as at the end of the colonial period; although its case load did diminish to some degree when the county courts were given equal jurisdiction in 1814. Certain other responsibilities were assigned to the Chancellor from time to time. The Constitution of 1776 required that the judges of elections for Delegates and for Electors of the Senate should make their returns to the Chancellor.²⁵³ Later other election returns were similarly filed.²⁵⁴ The authority to determine cases of alimony "as amply as they could be determined by the laws of England in the ecclesiastical courts" was bestowed upon the Chancellor in 1777²⁵⁵ and, as has already been seen, he became judge of the Land Office in 1781. One of the most important acts affecting the Chancery Court was Chapter 72 of the Acts of 1785, entitled, "An Act for enlarging the power of the High Court of Chancery," which gave the Chancellor a large measure of control over the property and affairs of minors and of lunatics, idiots and other mentally deficient persons. The Chancellor was also authorized to appoint an Auditor to state, audit and settle accounts agreeable to his order and a Messenger "to attend the chancery court, and to serve, execute and carry into effect, such process, orders and decrees thereof, as the chancellor may direct. . . ." After this, although it was the subject of much legislation regulating its procedures and operations in great detail, the fundamental structure and authority of the Chancery Court remained virtually unchanged.

The Constitution of 1851 provided for the gradual abolition of the Chancery

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Court.²⁵⁶ This, in spite of the fact that there were about 2,000 cases on the docket, that the Court was regarded as one of the best in Maryland and that the Chancellor then in office, John Johnson, was highly respected for his impartiality and other judicial qualities.²⁵⁷ The factor that brought about this decision seems to have been the desire to reduce the cost of the judiciary of the State. A total of \$36,000 in salaries was paid in 1842 to twenty-one judges and the Chancellor. Governor Francis Thomas in his message to the Legislature the same year declared that no state in the Union exceeded Maryland in either the number of judges or the salaries paid them.²⁵⁸ No doubt the fact that the county courts had concurrent jurisdiction in equity cases also influenced the decision to abolish the Court.

In order to dispose of the large backlog of cases, the Chancellor and Register were continued in office for two years, but no new business was to originate in the Court. In 1854, the Register of the Court of Chancery then in office was constituted the keeper of the records of the Courts. One of his duties was "to record and otherwise complete the proceedings of the said court."²⁵⁹ He was also required to transmit to the several counties and the City of Baltimore all unfinished cases and proceedings. Two years later, he was replaced by a "Keeper of the Records of the Court of Chancery," who was to be appointed by joint ballot of the two houses of the Legislature.²⁶⁰ Finally, in 1862, this office also was abolished and the Commissioner of the Land Office was placed in charge of the Chancery records and allowed an annual salary of five hundred dollars for his efforts.²⁶¹

ADMIRALTY COURT

On May 25, 1776, the Convention resolved to establish a court of admiralty for the purpose of trying captures and seizures made pursuant to the resolves of the Continental Congress and brought into a Maryland port.²⁶² William Hayward was elected Judge by the Convention, but he declined and the Council of Safety appointed Benjamin Nicholson in his place. The judge appointed the Register and Marshal.²⁶³ The Court of Admiralty was continued under the Constitution of 1776 and Nicholson was reappointed the judge.²⁶⁴ The records of the Court indicate that it continued on much the same basis as before. The war and other factors kept the Court fairly active until 1789, when jurisdiction over admiralty cases was transferred from the states to the newly-created Federal Government.²⁶⁵

COUNTY COURT

While the Constitution of 1776 did not specifically authorize the continuance of the county courts, references to justices of the county, clerks of the county courts and the requirement that a certified copy of every law be sent to the several county courts leave no doubt as to the intent of the framers.²⁶⁶ By a resolution of the Convention, which met from July 26 to August 14, 1775, all suits and actions which could not be settled immediately had been suspended. At the first session of the Assembly held after the adoption of the Constitution, the courts of justice were reopened. Included among them were the county courts whose justices were authorized to "hold their respective courts on the days heretofore directed by acts of Assembly."²⁶⁷ Justices were appointed for every county on April 1, 1777,²⁶⁸ and it is evident that the county courts continued to function in much the same manner as their colonial predecessors. The duties of the clerks of the county courts

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were also essentially the same as before except that they were given the added responsibility of issuing marriage licenses and keeping a list of such licenses.²⁶⁹

In 1790, the State was divided into five judicial districts. Two terms of court were to be held annually in each county of each district on the days assigned by the provisions of the act. The court for each district was to be composed of a Chief Justice and two Associate Justices, who were to be appointed by the Governor with the consent of the Council. All three justices were considered as the county court of each county within their district, but either the Chief Justice, who was required to be a person of "sound legal knowledge," or the two Associate Justices, who could be laymen, could hold court.²⁷⁰

The act also provided for the appointment of justices of the peace, who were to have the same jurisdiction they had always had except that they were no longer members of the county court. The justices of the county courts also had the power and jurisdiction of a justice of the peace.

The number and composition of the judicial districts varied so frequently that it would be fruitless to record every change. It may be of interest however to observe that the number increased to six in 1806,²⁷¹ to eight in 1851²⁷² and to thirteen in 1864.²⁷³ After 1805, the Associate Justices were also required to have legal training.²⁷⁴ The number of justices of the peace appointed for each county also tended to increase.

It should be noted also that when Baltimore City was created a separate political unit by the Constitution of 1851, several City courts were established. These were the Court of Common Pleas, the Superior Court of Baltimore City and the Criminal Court of Baltimore City. Each court had its own judge who was elected by the voters of the City for a ten year term and a clerk who was elected for a six year term.²⁷⁵ In 1853, a fourth court styled the Circuit Court for Baltimore City was established.²⁷⁶

It has already been observed that in 1773, the jurisdiction of the county courts in criminal cases had been made practically unlimited. In 1785, they were also given full jurisdiction in all civil cases in law. After the General Court was abolished in 1806, the county courts became the highest courts of original jurisdiction in law. In 1791, they were granted original equity jurisdiction in all cases where the value in dispute did not exceed 10,000 pounds of tobacco or £100. All limits were removed in 1814, and the county courts were given concurrent jurisdiction with the Chancery Court until that court was abolished in 1851.²⁷⁷

ORPHANS' COURT AND REGISTER OF WILLS

The Constitution of 1776 provided merely "that there be a register of wills appointed for each county, who shall be commissioned by the governor, on the joint recommendation of the senate and house of delegates," leaving a number of unanswered questions as to how probate matters were to be administered.²⁷⁸ But an act to regulate such matters was passed at the first session of the General Assembly held under the new form of government.²⁷⁹ The act abolished forever the office of Commissary General and established an Orphans' Court in each county. Certain justices of the peace, seven in Anne Arundel, Baltimore and Prince George's Counties and five in all other counties, were to be commissioned by the Governor and Council as Justices of the Orphans' Courts. Any three or more of

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them were empowered to hold court once every two months or oftener if required. Within their respective counties, they were to have the same jurisdiction heretofore had by the Commissary General. They could also issue summons, call juries and exercise all the other powers, with regard to executors, administrators, guardians and orphans, that the county courts formerly had.

Thus the duties of the Orphans' Courts were essentially the same as those performed by the Prerogative Court. The chief difference being that testamentary business was conducted by local courts established at the various county seats instead of by a central probate court located at Annapolis. Occasionally the Assembly saw fit to assign additional duties to the Orphans' Courts. The administration of the pension granted in 1778 to disabled soldiers and sailors who had served in the American Army was placed in the hands of the Orphans' Courts. They were made responsible for checking the validity of claims and authorized to draw on the State Treasurers for the amounts due.²⁸⁰ But soon after the Federal Constitution became effective, Congress assumed control of the pensioning of soldiers. In 1793, the Orphans' Courts were given jurisdiction in all matters pertaining to masters and apprentices, and empowered to bind out orphans and supervise their education and maintenance. By an act of 1798, all existing laws regulating the settlement of the estates of deceased persons were repealed and reenacted in a single carefully codified law. This became the basic law for all probate matters and the jurisdiction of the Orphans' Courts has not been greatly affected by subsequent laws.²⁸¹

The Register of Wills was the clerk of the Orphans' Court and was required to keep a record of its proceedings. The act of February 1777 gave the Register all the powers formerly held by the Deputy Commissary. He was also to record all wills and other matters heretofore recorded in the office of the Commissary General and furnish copies of such records upon demand and upon payment of a fee.

The codification act of 1798 did not effect the responsibilities of the Register of Wills, but since then there has been an observable tendency to increase his authority during the recess of the Orphans' Court. Thus, in 1803, he was permitted to pass any account against an estate where the amount of the claim did not exceed fifty dollars.²⁸² From 1817, he was empowered to receive inventories and accounts of sales, and to state guardians', executors' and administrators' accounts subject to review by the court.²⁸³ He was authorized to take probate of wills in 1832 and he was also directed to retain the originals of all wills probated in his office.²⁸⁴ It is interesting to note also that from 1806 until the Civil War, the Register was authorized to grant certificates of freedom to Negroes and was required to keep a record of those he issued.²⁸⁵

The number of Orphans' Court Justices commissioned in each county was reduced to three in 1790 and beginning in 1847, the person who was to be Chief Judge was so designated in the commission issued by the Governor.²⁸⁶ The Justices and the Registers of Wills were appointed to serve during good behavior until 1838 when their terms were limited to seven years. The Constitution of 1851 made both offices elective and reduced the term of office of the Justices to four years and that of the Registers to six years. The terms of both Justices and Registers were fixed at six years under the Constitution of 1864.²⁸⁷

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NOTES

- ¹ Article IV.
- ² Article V.
- ³ Article VII.
- ⁴ Article VIII.
- ⁵ Article XIV.
- ⁶ Article XIX.
- ⁷ Article XII.
- ⁸ Article XIII.
- ⁹ Article IV.
- ¹⁰ Article X.
- ¹¹ Newton D. Mereness, *Maryland as a Proprietary Province*, p. 153. New York, 1901.
- ¹² *Archives of Maryland*, III, pp. 49-53.
- ¹³ Mereness, pp. 158-9.
- ¹⁴ *Ibid.*, p. 175.
- ¹⁵ *Ibid.*, pp. 176-7.
- ¹⁶ Donnell MacClure Owings, *His Lordship's Patronage, Offices of Profit in Colonial Maryland*, pp. 21-23. Baltimore, 1953.
- ¹⁷ *Archives*, III, pp. 53-54.
- ¹⁸ *Ibid.*, pp. 60-61.
- ¹⁹ *Ibid.*, p. 116.
- ²⁰ *Ibid.*, pp. 140-41.
- ²¹ *Ibid.*, p. 158.
- ²² *Ibid.*, I, pp. 498-99.
- ²³ Owings, p. 31; *Archives*, XXIII, pp. 424-26.
- ²⁴ Owings, pp. 31, 129. It is possible also that William Bretton, who was appointed Clerk of the Assembly in 1640, also functioned under the supervision of the Secretary.
- ²⁵ *Archives*, V, pp. 49-52, 62.
- ²⁶ Owings, p. 29.
- ²⁷ *Ibid.*, pp. 124-29.
- ²⁸ *Ibid.*, p. 33.
- ²⁹ *Ibid.*, p. 127.
- ³⁰ *Ibid.*, p. 82; Mereness, p. 69.
- ³¹ *Archives*, XLIV, pp. 630-31.
- ³² Owings, pp. 32-33.
- ³³ Mereness, pp. 234, 270.
- ³⁴ Owings, p. 43; *Kent County Court Proceedings, Liber 1, 1676-1698*, p. 259, *Ms.*, Maryland Hall of Records, Annapolis.
- ³⁵ Owings, pp. 43, 132-34.
- ³⁶ *Ibid.*, pp. 84-86, 170-74.
- ³⁷ John Kilty, *The Land-Holder's Assistant and Land-Office Guide*, pp. 82-83, 271. Baltimore, 1808.
- ³⁸ Elisabeth Hartsook and Gust Skordas, *Land Office and Prerogative Court Records of Colonial Maryland*, Publications of the Hall of Records Commission No. 4, p. 18, [Annapolis], 1942; Mereness, pp. 60-62.
- ³⁹ Kilty, p. 227.
- ⁴⁰ Owings, p. 82.
- ⁴¹ Mereness, p. 154.
- ⁴² *Archives*, I, p. 95.
- ⁴³ *Ibid.*, pp. 142-46.
- ⁴⁴ *Ibid.*, pp. 355-56.
- ⁴⁵ *Ibid.*, VII, pp. 87, 104.
- ⁴⁶ *Ibid.*, II, pp. 538-39.
- ⁴⁷ *Ibid.*, XIII, pp. 538-39; XXXVIII, p. 158.
- ⁴⁸ *Ibid.*, II, p. 319.
- ⁴⁹ *Ibid.*, I, pp. 231-32, 238, 313.
- ⁵⁰ The levy act passed in 1696 was the last to itemize the public charges. (*Ibid.*, XXXVIII, pp. 87-91, 97-100.)
- ⁵¹ The proceedings of the Committee of Accounts for the sessions of 1695 and 1700 have been preserved. (*Ibid.*, XIX, pp. 193-208; XXIV, pp. 111-124.)
- ⁵² *Ibid.*, XXXVIII, p. 229.
- ⁵³ *Ibid.*, I, pp. 163, 290.
- ⁵⁴ *Ibid.*, XXXVIII, p. 11.

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- ¹⁰ *Ibid.*, XLIV, pp. 665–66.
- ¹¹ Clarence P. Gould, *Money and Transportation in Maryland 1720–1765*, pp. 94–95. Baltimore, 1915.
- ¹² A. C. Hanson, *Laws of Maryland, Made Since MDCCLXIII*, Ch. 26, Acts of November 1766. Annapolis, 1787.
- ¹³ *Ibid.*, Ch. 14, Acts of 1769.
- ¹⁴ *Ibid.*, Ch. 26, Acts of 1773.
- ¹⁵ Morris L. Radoff, *Buildings of The State of Maryland at Annapolis*, Publications of the Hall of Records Commission No. 9, p. 81 *et seq.* Annapolis, 1954.
- ¹⁶ *Archives*, XXVI, pp. 281–83, 289–92.
- ¹⁷ Mereness, pp. 89–90.
- ¹⁸ *Ibid.*, p. 172; *Archives*, II, p. 256.
- ¹⁹ Owings, p. 63.
- ²⁰ *Ibid.*, pp. 61–62.
- ²¹ *Ibid.*, pp. 63–65.
- ²² *Archives*, II, pp. 532–37.
- ²³ Mereness, pp. 374–99.
- ²⁴ The earliest surviving rent roll, containing entries dating to 1659, was kept by Secretary Philip Calvert. Known as “Rent Rolls, Liber O,” this volume is located in the Land Office. (Hartsook and Skordas, p. 38.)
- ²⁵ Owings, pp. 87–88.
- ²⁶ Clarence P. Gould, *The Land System in Maryland, 1720–1765*, pp. 34–39. Baltimore, 1913.
- ²⁷ Kilty, pp. 258–59.
- ²⁸ *Archives*, III, p. 54.
- ²⁹ Owings, pp. 77–78.
- ³⁰ Mereness, p. 61.
- ³¹ *Ibid.*, pp. 67–68.
- ³² The minutes of the Board of Public Revenue have been published in *Archives of Maryland*, XXXII, pp. 391–489.
- ³³ Mereness, pp. 360–62.
- ³⁴ *Ibid.*, pp. 353–60.
- ³⁵ Evidence that this assembly was held is found in the following excerpt taken from an act entitled, “An Act for the attainder of William Cleyborne gent.” which was passed on March 24, 1637/8: “and whereas by an Act of Generall Assemblie held at St. Maries on the six and twentieth day of Februy 1634 [/5] among other wholesome lawes and ordinances then made and provided for the welfare of this Province . . .” (*Archives*, I, p. 23.)
- ³⁶ *Ibid.*, pp. 1, 6–8.
- ³⁷ *Ibid.*, pp. 4, 6.
- ³⁸ *Ibid.*, pp. 9, 15 *et seq.*
- ³⁹ *Ibid.*, p. 31.
- ⁴⁰ *Ibid.*, pp. 262–72.
- ⁴¹ *Ibid.*, pp. 259–60, 340.
- ⁴² *Ibid.*, p. 130.
- ⁴³ Elihu S. Riley, *A History of The General Assembly of Maryland*, p. 24, Baltimore, 1905; *Archives*, I, pp. 272–73.
- ⁴⁴ Riley, pp. 28–30.
- ⁴⁵ Mereness, pp. 197–98.
- ⁴⁶ John V. L. McMahon, *An Historical View of the Government of Maryland From Its Colonization to the Present Day*, p. 149. Baltimore, 1837.
- ⁴⁷ Mereness, p. 199.
- ⁴⁸ *Ibid.*, pp. 201–05; *Archives*, XIII, pp. 541–44.
- ⁴⁹ *Ibid.*, I, pp. 5, 33, 39, 84, 89.
- ⁵⁰ *Ibid.*, pp. 90–91.
- ⁵¹ Owings, pp. 135–37.
- ⁵² *Archives*, I, p. 90.
- ⁵³ *Ibid.*, pp. 427, 429.
- ⁵⁴ *Ibid.*, p. 142.
- ⁵⁵ *Ibid.*, pp. 279–81.
- ⁵⁶ Mereness, p. 220; *Archives*, XIX, p. 369.
- ⁵⁷ *Ibid.*, XLIV, pp. 66–67.

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- ¹⁰⁰ *Ibid.*, p. 229; Carroll T. Bond, *The Court of Appeals of Maryland, A History*, p. 3. Baltimore, 1928.
- ¹⁰¹ *Ibid.*, pp. 6-8.
- ¹⁰² *Ibid.*, pp. 22-26.
- ¹⁰³ *Ibid.*, pp. 28-29, 56.
- ¹⁰⁴ *Archives*, IV, pp. 21, 33.
- ¹⁰⁵ *Ibid.*, pp. 15, 66, 144, 183.
- ¹⁰⁶ Mereness, pp. 237-41.
- ¹⁰⁷ *Archives*, XLIX, p. xii; I, pp. 487-88.
- ¹⁰⁸ *Ibid.*, XX, p. 137.
- ¹⁰⁹ Mereness, p. 253.
- ¹¹⁰ See *Archives of Maryland*, I, 182-83.
- ¹¹¹ *Ibid.*, LI, pp. xliii, lvii.
- ¹¹² *Ibid.*, pp. x, xiii, lx.
- ¹¹³ *Ibid.*, pp. 35, 412, 440, 445.
- ¹¹⁴ *Ibid.*, pp. lvii, 19, 407.
- ¹¹⁵ *Ibid.*, p. xlix.
- ¹¹⁶ *Ibid.*, pp. lvii-lix.
- ¹¹⁷ *Ibid.*, p. lvi.
- ¹¹⁸ *Ibid.*, XLIX, p. 23.
- ¹¹⁹ *Ibid.*, XX, pp. 91-97, 100-01, 114-15, 309, 340, 478.
- ¹²⁰ *Ibid.*, p. 238.
- ¹²¹ *Ibid.*, pp. 478-84.
- ¹²² *Ibid.*, XXV, p. 322.
- ¹²³ *Commission Record, 1733-1773*, pp. 14-17, *Ms. Hall of Records*.
- ¹²⁴ *Archives*, XXVIII, pp. 38-39; XL, p. 308; XLIV, pp. 634-35.
- ¹²⁵ *Court of Vice Admiralty Proceedings 1754-1775*, Hall of Records. This is a photostatic copy of the original record at the Library of Congress.
- ¹²⁶ *Archives*, XXXII, p. 28.
- ¹²⁷ This section is based on Hartsook and Skordas, pp. 79-92.
- ¹²⁸ *Archives*, III, p. 59.
- ¹²⁹ *Ibid.*, I, pp. 55-57.
- ¹³⁰ *Ibid.*, III, p. 105.
- ¹³¹ *Ibid.*, XLI, pp. 86-89.
- ¹³² *Ibid.*, III, pp. 422-25.
- ¹³³ P. 232.
- ¹³⁴ Mereness, p. 247.
- ¹³⁵ *Ibid.*, p. 242.
- ¹³⁶ *Archives*, LIII, p. xxxix.
- ¹³⁷ Cyrus H. Karraker, *The Seventeenth-Century Sheriff*, p. 87. Chapel Hill, 1930.
- ¹³⁸ *Inventory of the County and Town Archives of Maryland, No. 2 Anne Arundel County (Annapolis)*, p. 21. Prepared by the Maryland Historical Records Survey, WPA, Baltimore, 1941.
- ¹³⁹ Published in *Archives of Maryland*, LIII, pp. 627-37.
- ¹⁴⁰ *Ibid.*, lxi-lxv.
- ¹⁴¹ Reproduced in Elihu S. Riley, "The Ancient City." *A History of Annapolis in Maryland*, pp. 87-91. Annapolis, 1887.
- ¹⁴² See *Catalogue of Archival Material, Hall of Records*, Hall of Records Commission Publication No. 2, pp. 141-47, [Annapolis], 1942.
- ¹⁴³ Ch. 194, Acts of 1818.
- ¹⁴⁴ Percy G. Skirven, *The First Parishes of The Province of Maryland*, p. 19. Baltimore, 1923. See also Ch. 2, May 1692; Ch. 18, July 1696; Ch. 1, May 1700; Ch. 1, 1702.
- ¹⁴⁵ *St. Luke's Parish Vestry Minutes, 1729-1799*, pp. 247, 248, 252, 253, *Ms. Hall of Records*.
- ¹⁴⁶ Article 32.
- ¹⁴⁷ Article 6.
- ¹⁴⁸ Article 31.
- ¹⁴⁹ Article 30.
- ¹⁵⁰ Article 25.
- ¹⁵¹ Article 31.
- ¹⁵² Articles 26, 34.
- ¹⁵³ Articles 48, 40.
- ¹⁵⁴ Article 33.
- ¹⁵⁵ Article 29.

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- ¹²⁰ Article 60.
- ¹²¹ Heinrich E. Buchholz, *Governors of Maryland*, pp. 35-36. Baltimore, 1908.
- ¹²² Ch. 26, Acts of 1789; Ch. 55, Acts of 1790; Ch. 165, Acts of 1823.
- ¹²³ Ch. 138, Acts of 1809.
- ¹²⁴ Ch. 53, Acts of 1826.
- ¹²⁵ Ch. 42, Acts of April 1782.
- ¹²⁶ Ch. 1, Acts of November 1787.
- ¹²⁷ Quoted from Buchholz, p. 39.
- ¹²⁸ Ch. 197, Acts of 1836; Ch. 84, Acts of 1837. The procedure for altering the Constitution of 1776 required that the amending bill be passed at one session of the Assembly and then be confirmed at the first session following a new election of Delegates (Article 59.)
- ¹²⁹ Charles J. Rohr, *The Governor of Maryland*, pp. 73-75. Baltimore, 1932.
- ¹³⁰ *Ibid.*, pp. 76-77.
- ¹³¹ Articles 48, 40.
- ¹³² James W. Harry, *The Maryland Constitution of 1851*, p. 77, Baltimore, 1902; Ch. 247, Acts of 1816; Ch. 69, Ch. 146, Acts of 1817.
- ¹³³ Ch. 126, Acts of 1821.
- ¹³⁴ Harry, p. 78; William S. Myers, *The Maryland Constitution of 1864*, pp. 72-73. Baltimore, 1901.
- ¹³⁵ Articles 51, 48, 40.
- ¹³⁶ Kilty, pp. 300-01, 308-11.
- ¹³⁷ *Ibid.*, pp. 328-30.
- ¹³⁸ Ch. 200, Ch. 318, Acts of 1841; Ch. 239, Acts of 1842.
- ¹³⁹ Article VII, Section 3.
- ¹⁴⁰ *Biennial Report of the Commissioner of the Land Office of Maryland from October 1, 1917 to September 30, 1919*, p. 11. See also Ch. 415, Acts of 1853 and Ch. 208, Acts of December 1861.
- ¹⁴¹ *Proceedings of the Conventions of the Province of Maryland held at Annapolis in 1774, 1775, 1776*, pp. 26-29, 366-70. Baltimore and Annapolis, 1836.
- ¹⁴² *Catalogue of Archival Material, Hall of Records*, pp. 72-74.
- ¹⁴³ *Ibid.*, pp. 61-63.
- ¹⁴⁴ *Ibid.*, pp. 66-67.
- ¹⁴⁵ Hugh S. Hanna, *A Financial History of Maryland (1789-1848)*, pp. 11-12. Baltimore, 1907.
- ¹⁴⁶ Article 13.
- ¹⁴⁷ *Recorded Laws of Maryland*, G.R. No. 1, pp. 64-78 (Ch. 21, Acts of February 1777), *Ms. Hall of Records*.
- ¹⁴⁸ Hanna, pp. 13-15.
- ¹⁴⁹ Ch. 26, Acts of October 1780.
- ¹⁵⁰ Ch. 53, Acts of 1794.
- ¹⁵¹ Ch. 34, Acts of 1798.
- ¹⁵² *Inventory of Archives of Anne Arundel County*, pp. 21, 22, 25.
- ¹⁵³ Ch. 217, Acts of 1826.
- ¹⁵⁴ Article VII, Section 8.
- ¹⁵⁵ *Recorded Laws of Maryland*, G. R. No. 1, pp. 79-80 (Ch. 22, Acts of February 1777), *Ms. Hall of Records*.
- ¹⁵⁶ Hanna, p. 18.
- ¹⁵⁷ *Ibid.*, pp. 20-21.
- ¹⁵⁸ *Ibid.*, p. 23.
- ¹⁵⁹ *Ibid.*, pp. 28-30.
- ¹⁶⁰ *Ibid.*, pp. 32-33. For a full account of this controversy see Morris L. Radoff, *Calendar of Maryland State Papers, No. 2, The Bank Stock Papers*, Hall of Records Commission Publication No. 5. Annapolis, 1947.
- ¹⁶¹ Hanna, pp. 35-36, 38.
- ¹⁶² *Ibid.*, pp. 60, 62-68.
- ¹⁶³ *Ibid.*, pp. 76, 79, 87-95, 104-05.
- ¹⁶⁴ *Ibid.*, pp. 105-15.
- ¹⁶⁵ *Catalogue of Archival Material, Hall of Records*, pp. 81-82, 87.
- ¹⁶⁶ Articles 1, 2, 4, 5.
- ¹⁶⁷ Articles 14, 15.
- ¹⁶⁸ Articles 10, 11, 13.
- ¹⁶⁹ Const. 1851, Article III, Section 18; Const. 1864, Article III, Section 26.
- ¹⁷⁰ Article 33.
- ¹⁷¹ Articles 16, 15.
- ¹⁷² Articles, 39, 40.

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- ²¹² Articles 10, 12.
²¹³ Article I, Sections 8-10.
²¹⁴ Ch. 22, Acts of November 1809.
²¹⁵ *Journal of the House of Delegates*, December Session 1828, p. 9.
²¹⁶ *Journal of the Senate*, December Session 1828, p. 5.
²¹⁷ Ch. 262, Acts of 1841.
²¹⁸ Buchholz, pp. 146-47.
²¹⁹ Article III, Section 22.
²²⁰ Article III, Sections 21, 37.
²²¹ Article III, Sections 43, 44, 47.
²²² Article 23.
²²³ Article 24.
²²⁴ Riley, *History of The General Assembly*, pp. 326, 352.
²²⁵ *Ibid.*, p. 356.
²²⁶ Ch. 115, Acts of 1798; Ch. 48, Acts of 1799.
²²⁷ Ch. 90, Acts of 1801; Ch. 20, Acts of 1802.
²²⁸ Ch. 83, Ch. 198, Acts of 1809; Ch. 18, Ch. 33, Acts of 1810.
²²⁹ See note 167.
²³⁰ Harry, pp. 17-18.
²³¹ Ch. 269, Acts of 1845; Ch. 306, Acts of 1846.
²³² Article III, Section 5, 6.
²³³ Myers, pp. 66-69.
²³⁴ Bond, p. 58.
²³⁵ Declaration of Rights, Article 30.
²³⁶ Bond, pp. 61-63.
²³⁷ *Ibid.*, p. 78.
²³⁸ *Ibid.*, pp. 61, 77.
²³⁹ *Ibid.*, p. 96; Ch. 65, Act of 1805.
²⁴⁰ Bond, pp. 150-51.
²⁴¹ *Ibid.*, pp. 151, 156-67.
²⁴² *Ibid.*, pp. 170.
²⁴³ Article 56.
²⁴⁴ Article 47.
²⁴⁵ Article 60.
²⁴⁶ Ch. 9, Acts of 1785.
²⁴⁷ Bond, pp. 88-90.
²⁴⁸ *Ibid.*, 96-97; Ch. 65, Acts of 1805. See also section on Court of Appeals above.
²⁴⁹ Article 56.
²⁵⁰ Articles 36, 47.
²⁵¹ *Commission Record, 1777-1800*, p. 33, *Ms. Hall of Records*.
²⁵² *Chancery Record*, 13, p. 184, *Ms. Land Office*.
²⁵³ Articles 3, 14.
²⁵⁴ Ch. 97, Acts of 1805.
²⁵⁵ Ch. 12, Acts of February 1777.
²⁵⁶ Article IV, Section 23.
²⁵⁷ *Debates and Proceedings of the Maryland Reform Convention to Revise the State Constitution*, Vol. II, pp. 632-33. Annapolis, 1851.
²⁵⁸ Harry, pp. 19-20.
²⁵⁹ Ch. 149, Acts of 1854.
²⁶⁰ Ch. 132, Acts of 1856.
²⁶¹ Ch. 208, Acts of December 1861.
²⁶² *Convention Proceedings, 1774-1776*, p. 155.
²⁶³ *Archives*, XII, p. 411.
²⁶⁴ *Journal of the Votes and Proceedings of the House of Delegates, 1777*, p. 137, *Ms. Hall of Records*.
²⁶⁵ Article I, Section 8.
²⁶⁶ Articles 3, 14, 40, 60.
²⁶⁷ Ch. 15, Acts of February 1777.
²⁶⁸ *Journal of the Votes and Proceedings of the House of Delegates, 1777*, pp. 137-42.
²⁶⁹ Ch. 12, Acts of February 1777.
²⁷⁰ Ch. 33, Acts of 1790.
²⁷¹ Bond, pp. 95-96; Ch. 55, Acts of 1804; Ch. 16, Acts of 1805.
²⁷² Const. of 1851, Article IV, Section 8.

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- ²⁷³ Const. of 1864, Article IV, Section 24.
- ²⁷⁴ Ch. 55, Acts of 1804; Ch. 16, Acts of 1805.
- ²⁷⁵ Const. of 1851, Article IV, Sections 10–15.
- ²⁷⁶ Ch. 122, Acts of 1853.
- ²⁷⁷ *Inventory of Archives of Anne Arundel County*, pp. 79–80.
- ²⁷⁸ Article 41.
- ²⁷⁹ Ch. 8, Acts of February 1777.
- ²⁸⁰ Ch. 14, Acts of October 1778.
- ²⁸¹ *Inventory of Archives of Anne Arundel County*, p. 129.
- ²⁸² Ch. 101, Acts of 1802.
- ²⁸³ Ch. 203, Acts of 1816.
- ²⁸⁴ Ch. 315, Acts of 1831.
- ²⁸⁵ Ch. 66, Acts of 1805.
- ²⁸⁶ *Inventory of Archives of Anne Arundel County*, p. 127.
- ²⁸⁷ *Ibid.*, pp. 128, 130; Ch. 224, Acts of 1836; Ch. 160, Acts of 1837.