INTERESTING FACT DISCOVERED IN ANTIQUITY OF OUR COURT OF APPEALS.

Maryland's Reports Are 146 Years Older Than Those Of Massachusetts And 72 Years Older Than Those Of Virginia—Since Re-Organization In 1867 It Has Had But 5 Chief Judges.

The Court of Appeals is the great judicial safeguard of the State. It is an institution time honored and robed with the dignity befitting its authority. In the years that have passed this Court has grown to the present constituency, and its membership, in numbers, is one of its best assurances of approval by the people. There is no just cause to effect changes in its working efficiency.

The Court has been in the public mind because of some proposed changes. At this time it may be appropriate to present our readers with an outline of the formation and functions of the Court.

When Charles the First granted the Charter to Cecelius Calvert, Baron of Baltimore, power was given to establish such judicial tribunals in the Province of Maryland as were deemed necessary. By his commission, under date of April 15, 1637, Lord Baltimore appointed his brother, Leonard Calvert, to be Chief Justice Chancellor, and Chief Magistrate of the new colony, also naming three other members of the Council. This was the origin of the Maryland Court of Appeals, the Council thus formed being the first court and Lieutenant-General Leonard Calvert the first Chief Justice. Historians of early Maryland days pay high tribute to the justice of this Council, remarking that during a long period there was no exercise of arbitrary power.

This Council so formed, though its members changed frequently, continued to be the highest judicial authority in the Colony until the beginning of American independence. The Constitution of Maryland provides for the holding of the Court of Appeals in Annapolis, and this may be interestingly traced back to the Act of 1699, which set forth "that the port of Annapolis should be the general place and seat of justice for the holding of Assemblies and Provincial Courts." Hence all writs issuing out of and returnable to the Provincial Court and the Court of Chancery were made returnable to this town.

A very interesting fact is discovered in the antiquity of our Court of Appeals, in that the report of cases antedate reports in any other State; the earlier cases are reported in the proceedings of the Council. Maryland's reports are 146 years older than those of Massachusetts and 72 years older than those of Virginia. This is an historic credit to our State and to our Court of Appeals that shows the highly developed government of Maryland, in contrast to the other original States.

During the stormy and uncertain days of 1776 the assembled convention in Annapolis adopted in November the first Consitution of our State, in which provision was made for the composition of the Court of Appeals "of persons of integrity and sound judgment in the Law, whose judgments were to be final and conclusive in all cases of appeal from the General Court, the Court of Chancery, and the Court of Admirality."

In the early part of 1777, after lengthy consideration by the House of Delegates and the Senate, the composition of the Court of Appeals was fixed to consist of five judges, to be selected by the House of Delegates and confirmed by the Senate. Not, however, until December 12, 1778, did the House recommend the judges, but the Senate immediately confirmed the five men, and the first Court of Appeals, as provided by the Constitution of 1776, was constituted. The seal then adopted is the same that has continued in use to the present time. The five judges who composed this tribunal were Benjamin Rumsey, Benjamin Makell, 4th; Thomas Jones, Solomon Wright and James Murray. In the selection of one of this number to be Chief Judge the honor fell to Benjamin Rumsey, who served in that capacity for twenty-eight years.

This constituency of the Court continued until the Acts of 1804 and 1805, by which time the expectations of an independent Court of Appeals were found not fully realized as demanded by the Senate of 1777. Therefore twelve years after its formation the composition of the Court was changed. The State was divided into six Judicial Districts, each to have three judges, one of whom to be commissioned as Chief Judge, and to become thereby a member of the Court of Appeals. This made the Court of Appeals closely allied to the several circuit courts.

Jeremiah Townley Chase was commissioned Chief Judge in 1806 and served until compelled to resign because of ill health in 1824. He was succeeded by Judge John Buchanan, who served thirty-seven years. It was during his time on the bench that the famous case between the Chesapeake and Ohio Canal Company and the Baltimore and Ohio Railroad Company was argued by Daniel Webster and Reverdy Johnson for the Railroad Company. The next Chief Judge was Judge Stevenson Archer, who served until his death in 1848. Judge Thomas Dorsey was the next incumbent, who served until the adoption of the Constitution of 1851, when provision was made for a change in the entire judiciary system of the State. This was the first change since 1776. But it was a radical one for its day; yet it determined the present system—that is the election of judges by the people.

A new alignment divided the State into four judicial circuits and from each circuit was elected a member of the Court of Appeals, the Governor to select from the four thus elected one to be Chief Judge. The term of office was ten years. Under the Constitution of 1864 the term was extended to fifteen years. Three years later, in the reorganization days following the "War Between the States," which effected so many remarkable changes in various parts of our country, the judicial system of 1805 was restored. The present membership of the Court, as provided, is that "the Court of Appeals shall be composed of the Chief Judge of the first seven of the several Judicial Circuits of the State and a judge from Baltimore City specially elected thereto, one of whom shall be designated by the Governor, by and with the advice of the Senate, as the Chief Judge."

Since the reorganization in 1867 there have been only five Chief Judges, including the present incumbent, Judge Boyd, their service either ending with their death or resignation, notably the case of Judge Alvey, who was named by President Cleveland in 1893 to be Chief Justice of the Court of Appeals of the District of Columbia, an honor not only to him but to the State of Maryland.

The functions of the Court of Appeals are clearly defined, yet there exists in the popular mind an indefinite idea of its workings. It is not complex, but free from circumlocutions.

There is no original jurisdiction to the Court. Its very name "Appeals" signifies that only such cases can be heard that are refused for review or re-hearing. It cannot originate a case. It can only confirm a former decision, or alter a former decision of a lower court. Its jurisdiction is entirely appellate.

Appeals from courts of law, either civil or criminal cases, the Court of Appeals takes under consideration only the decisions of the lower courts on questions of law. Appeals from courts of equity, the cases are viewed both as to the facts and the law involved.

The manner of procedure in entering a case before the Court of Appeals is as follows. If appeal is taken from the judgment or decision of a lower court, the clerk of the court where the case was first heard sends a transcript of the records of the case to the Court of Appeals. This record is printed, and the case comes up during the first term after the date the record is received. The counsel must file a printed brief of their argument. When the case is heard they are given forty-five minutes to address the Court.

The Court of Appeals is a hard working body. There are three terms. The first session is in January, the second in April, and the third in October. The hours of meeting are from ten in the morning until four in the afternoon. It is now customary, when several days of the first part of each term have passed, for the Court to hold evening sessions of the judges, for consultation, at which time cases lately heard and other important matters are discussed.

At the completion of the docket the Court adjourns until the next term. But this does not end the work of the judges. They go to their respective circuits to carefully consider the records, and briefs of the cases that have been before the Court, and write the opinions. Each judge has one or more cases assigned him to write the opinion, to be delivered later as the decision of the Court. This period, following the adjournment, is the most trying and laborious time of the judges of the Court of Appeals, and the work of any particular term is not completed until all the briefs have been examined and the opinions written.

(Continued on Page 4)

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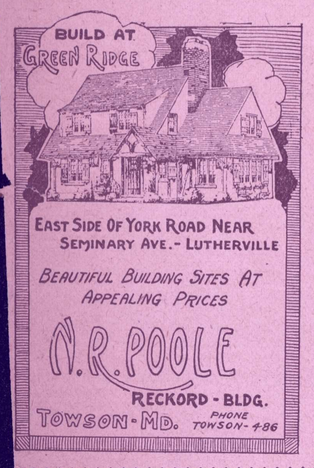

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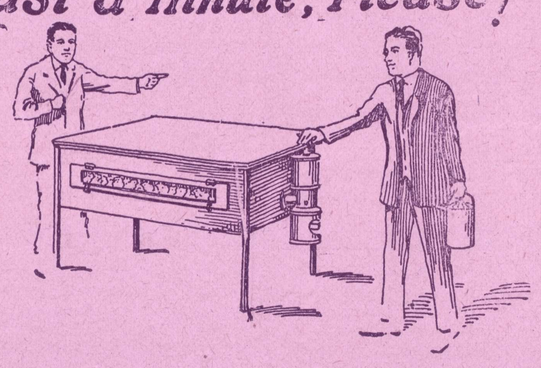

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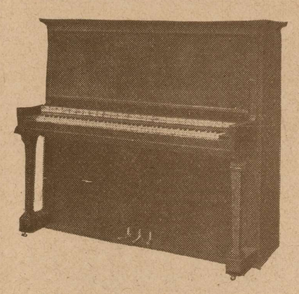
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