RULES

OF THE

COURT OF APPEALS

OF MARYLAND

AND

GENERAL RULES

FOR THE

REGULATION

OF THE

PLEADING AND PRACTICE

OF THE

COURTS OF EQUITY IN THIS STATE

REVISED AND ADOPTED BY THE
COURT OF APPEALS
1933

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RULES RELATING TO APPEALS

AND

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APPEALS FROM COURTS OF LAW.

1.

CODE, ARTICLE 5, SEC. 4.

Formal Writs of Error shall, in all cases, be dispensed with, and the party applying to have the record removed, as upon Writ of Error, in cases where by law Writs of Error are allowable, shall, by brief petition, addressed to the Court in which the case was tried, plainly designate the points or questions of law by the decision of which he feels aggrieved; which application so to remove the record, shall be allowed as of right; and no point or question not thus plainly designated in such application shall be heard or determined by the Court of Appeals.

2.

CODE, ARTICLE 5, SEC. 6.

All appeals, or Writs of Error, allowed from any judgment or determination of a Court of Law, to the Court of Appeals of this State, other than from decisions on questions arising under the Insolvent Law, shall be taken within two months from the date of such judgment or determination, and not afterwards; and the transcript of the record shall be transmitted to the Court of Appeals within three months from the time of the appeal taken, or Writ of Error allowed.

3.

CODE, ARTICLE 5, SEC. 8.

All appeals allowed from decisions of questions arising under the Insolvent Law shall be taken within thirty days from the time of the decision made, and a transcript of the record shall be transmitted to the Clerk of this Court within sixty days from the date of the decision appealed from, but the execution or effect of any judgment, decree, decision or order so appealed from shall not be suspended or stayed, unless a bond shall be given in such penalty and condition, and with such security as the lower Court may prescribe and approve.

4.

CODE, ARTICLE 5, SEC. 10.

In no case shall the Court of Appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the Court below; and no instruction actually given, shall be deemed to be defective by reason of any assumption therein of any fact by the said Court, or because of a question of law having been thereby submitted to the jury, unless it appear, from the record, that an objection thereto for such defect was taken at the trial; nor shall any question arise in the Court of Appeals as to the insufficiency of evidence to support any instruction actually granted, unless it appear that such question was distinctly made to and decided by the Court below.

5.

CODE, ARTICLE 5, SEC. 12.

Bills of exception shall be so prepared as only to present to the Court of Appeals the rulings of the Court below upon some matter of law, and shall contain only such statement of facts as may be necessary to explain

the bearing of the rulings upon the issues or questions involved; and if the facts are undisputed, they shall be stated as facts, and the evidence from which they are deduced shall not be set out; and, if disputed, it shall be sufficient to state that evidence was adduced tending to prove them, instead of setting out the evidence in detail; but if a defect of proof be the ground of the ruling or exception, then the particulars in which the proof is supposed to be defective shall be briefly stated, and all the evidence offered in anywise connected with such supposed defect, shall be set out in the bill of exception. And it shall be the duty of the Judges in the Courts below to require exceptions to be prepared in accordance with this rule.

6.

CODE, ARTICLE 5, SEC. 14.

In no bill of exception shall any patent, deed, will, or other documentary evidence be inserted at length, but shall only be stated briefly, according to its import and effect, unless the nature of the question raised and decided render it necessary that it should be inserted *in extenso;* nor shall any document be more than once inserted at large in any transcript to be sent to the Court of Appeals. And it shall be the duty of the Judges of the Courts below to require exceptions to be prepared in accordance with this rule. Either party, however, shall have the right to have any or all of such documentary proof inserted at length, it being stated in the exception at whose instance the same is so inserted, that costs may be awarded as the matter so incorporated may be deemed proper or not by the Court of Appeals to have been set out in full.

7.

CODE, ART. 5, SEC. 15.

In making up the transcript of records to be transmitted to the Court of Appeals, the clerks of the Courts below shall omit from such transcripts the formal headings and commencement of the record, stating only the titling of the cause, and the time of the commencement of the suit or proceedings; they shall also omit all writs, or original process for appearance, where the party has appeared; all entries of continuances and imparlances; all entries of motions and rules to declare or plead; all entries of applications for continuances, for commissions, or for warrants of resurvey, and the affidavits in support thereof, together with the rulings of the Court on such applications; all entries of motions or rules of security for costs, together with the proceedings and rulings thereon; all entries of empanelling, swearing, and names of jurors, and all other merely incidental motions and rules made in the progress of the cause; all pleadings withdrawn, waived or superseded by amendment; all commissions to take testimony and the formal returns thereto, and all warrants of resurvey, the clerk stating the time of issue and return of such warrant; all replevin, *retorno habendo*, and appeal bonds, and affiadvits filed on taking appeals; all formal entries of motions for new trials, and the rulings thereon, together with the affidavits and other evidence used on such motions, the clerk stating in lieu thereof, the fact of such motion being made, and how disposed of by the Court, unless, where any of the foregoing matters or proceedings may be used as evidence in the cause, or where some question may arise in regard thereto, reviewable by the Court of Appeals, then, so much only of any such matter or proceedings as may be used in evidence, or as appertain to the decision or determination desired to be reviewed, shall be incorporated in the transcript, and no more; the intent being to avoid incorporating in the transcript

any matter or thing not material to the full and fair presentation of the questions to be reviewed by the Appellate Court.

No documentary evidence or exhibits shall be omitted from the transcript and brought to this Court separately, in the originals or copies, for reference in the argument and decision, except with the approval of a member of this Court, or under the authority and direction of statute; but a statement of the contents and effect of such documentary evidence or exhibits may be included in the record by stipulation of the parties. Reproductions of documents by photographic or photostatic process may only be used to exhibit the form or condition of signatures or other matter inscribed or printed on the documents, and only in clear, positive form of black letters or marks upon white ground.

8.

CODE, ARTICLE 5, SEC. 24.

SECTION 1. In all cases where judgments shall be reversed or affirmed by the Court of Appeals, and it shall appear to the Court that a new trial ought to be had, such new trial shall be awarded, and a certified copy of the opinion and judgment of the Court of Appeals shall be transmitted forthwith to the Court from which the appeal was taken, to the end that said cause may be again tried as if it had never been tried; and no writ of *procedendo*, with transcript of record, shall be transmitted, as heretofore practised.

SEC. 2. When an appeal is dismissed or a judgment or decree is affirmed or reversed without being remanded, the Clerk of this Court shall transmit a copy of the docket entries, under the seal of the Court, to the Court from which the appeal is taken, or writ of error granted, as soon as practicable, not later than thirty days after the case is disposed of by this Court.

APPEALS FROM COURTS OF EQUITY.

9.

CODE, ARTICLE 5, SEC. 36.

All appeals allowed from decrees or orders of Courts of Equity shall be taken and entered within two months from the date of the decree or order appealed from, and not afterwards; unless it shall be alleged on oath that such decree or order was obtained by fraud or mistake, in which case the appeal shall be entered within two months from the time of the discovery of the fraud or mistake, and not afterwards.

10.

CODE, ARTICLE 5, SEC. 37.

All transcripts of records, on appeals from Courts of Equity, shall be made and transmitted to the Court of Appeals within three months from the time of the appeal prayed; but on appeals taken as provided by Sec. 31 of Art. 5, of the Code of Public General Laws, the transcript of the record shall be made and transmitted to the Court of Appeals forthwith after the appeal prayed.

11.

CODE, ARTICLE 5, SEC. 38.

In making up the transcript of the record of Equity proceedings to be transmitted to the Court of Appeals, it shall be the duty of the Clerk of the Court from which the appeal may be taken, to omit therefrom the formal heading and commencement of the record, stating only the titling of the cause and the time of the commencement of the proceedings; he shall omit all subpœnas and other process for appearance of parties if parties have appeared; all orders and certificates of publication stating in lieu thereof the date of such order; the period of

publication required, how published, and the time fixed for appearance of parties thereunder; all commissions to appoint guardians and orders to take testimony, and the formal returns thereto, stating in lieu thereof the fact and time of issuing such commissions, and passing such orders and the time of the return of such testimony; all entries of continuances; all injunction bonds, receivers' bonds, trustees' bonds, appeal bonds, and affidavits filed on appeal; all proceedings in the cause subsequent to the decree or order appealed from; and all merely collateral proceedings not in anywise involved in the matter of appeal, and which cannot be material to the hearing and decision of the case by the Court of Appeals; any party to the appeal, however, shall have the right to direct any particular part of the proceedings of the cause, that would otherwise be omitted, to be incorporated in the transcript, the clerk stating at whose instance the same is inserted, that costs may be awarded, as the matter so directed to be incorporated may be deemed material or not by the Court of Appeals.

12.

CODE, ARTICLE 5, SEC. 39.

Whenever deeds, records or other documentary evidence are used in any equity cause, the purport and substance only of such deeds, records or other instrument shall be stated, and they shall not be set out in full in any case, except where some question arises upon the construction or validity thereof, and transcripts of records in equity causes shall be prepared in accordance with this rule. Any party to the appeal, however, shall have the right to direct any or all of such documentary proof to be inserted at length, the clerk stating at whose instance the same is so inserted that costs may be awarded as the matter so incorporated may be deemed proper or not, by the Court of Appeals, to have been set out in full.

No documentary evidence or exhibits shall be omitted from the transcript and brought to this Court separately, in the originals or copies, for reference in the argument and decision, except with the approval of a member of this Court, or under the authority and direction of statute; but a statement of the contents and effect of such documentary evidence or exhibits may be included in the record by stipulation of the parties. Reproductions of documents by photographic or photostatic process may only be used to exhibit the form or condition of signatures or other matter inscribed or printed on the documents, and only in clear, positive form of black letters or marks upon white ground.

13.

Before the transcript of the record is transmitted to this Court, and at least ten days before the beginning of the term of this Court to which the record is to be transmitted, unless a shorter time prior thereto shall be agreed upon by the parties, the appellant may file with the Clerk of the Court from which the appeal is taken, to be attached to the transcript, a memorandum designating such portions of the record as the appellant may consider unnecessary to be included in the printed record in this Court, and a similar right may be exercised by the appellee, provided that either party exercising such right shall forthwith serve a copy of the memorandum so filed, upon the solicitor of the opposite party, who shall file within five days thereafter, or within a shorter time if agreed upon by the parties, a statement indicating the extent to which, if at all, the proposal embodied in the memorandum filed by the other party to the appeal is assented to, and if no such reply statement is filed within the time prescribed, the proposed omissions from the printed record shall be regarded as having been assented to as a whole. The Clerk of this Court shall cause to be omitted from the record as printed all matter

which the memoranda and statements filed by the parties shall agree in designating as not necessary to be printed, and in the particulars in which the memoranda and statements do not so agree, he shall note at whose instance the matter is included in the printed record. If it shall subsequently develop that any portion of the transcript, which has been omitted from the record as printed, should properly have been included, it may be directed by the Court of Appeals to be printed, on application of any of the parties, or of its own motion, or such supplemental printing may be obviated by the use of the original transcript, when such use is authorized by the Court as being sufficient for the purpose of the hearing and decision of the case. If a party to the appeal shall fail to file a memorandum or reply statement, as provided by this rule, the Clerk of this Court shall omit from the record as printed all matter which the memorandum of the party acting under the rule shall have designated as proper to be so omitted. The provisions of this rule or of Rule 12, shall not have the effect of extending the time limited by other existing rules for the transmission of records to this Court.

14.

When the questions presented by an appeal can be determined by the Court of Appeals without an examination of all the pleadings and evidence, the parties, with the approval of the Circuit Court or the Judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the Appellate Court. Such statement, when filed in the office of the Clerk of the Circuit Court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which

the appeal is taken, and, together with such decree, shall be copied and certified to the Appellate Court as the record on appeal.

APPEALS FROM THE ORPHANS' COURTS.

15.

CODE, ARTICLE 5, SEC. 66.

All appeals allowed from orders or decrees of the Orphans' Courts to the Court of Appeals, shall be taken and entered within thirty days after such order or decree appealed from; and the Register of Wills shall make out and transmit to the Court of Appeals, under his hand and the seal of his office, a transcript of the record of proceedings in such case, within thirty days after the appeal prayed; but in such transcript no paper or proceeding, not necessary to the determination of the appeal, shall be incorporated.

APPEALS FROM THE COMMISSIONER OF THE LAND OFFICE.

16.

CODE, ARTICLE 5, SEC. 89.

All appeals allowed from the judgments or orders of the Commissioner of the Land Office, shall be taken within two months from the date of the judgment or order appealed from, the party appealing filing at the time of such appeal the ground or reasons therefor; and thereupon it shall be the duty of the said Commissioner to make out, under his hand and the seal of his office, and transmit to the Court of Appeals, a transcript of the record of proceedings in such case, within sixty days from the time of the appeal taken, but in such transcript no paper or proceedings, not necessary to the determination of the appeal, shall be incorporated.

RELATING TO APPEALS GENERALLY.

17.

CODE, ARTICLE 5, SEC. 43.

Upon any appeal being taken in a Court of Law or Equity, or application to take up the record as upon Writ of Error allowed, the clerk of such Court shall make out, and transmit to the Court of Appeals, a transcript of the record of proceedings, under the seal of his office, in accordance with the foregoing rules, and within the time therein prescribed, and upon the receipt of such transcript, the Clerk of the Court of Appeals shall enter the case upon his docket as of the term next after the receipt of such transcript, unless required to be placed upon the docket of the term during which it is received by the rules of this Court or some statute.

18.

CODE, ARTICLE 5, SEC. 44.

No appeal shall be dismissed because the transcript shall not have been transmitted within the time prescribed, if it shall appear to the Court of Appeals that such delay was occasioned by the neglect, omission or inability of the clerk or appellee; but such neglect, omission or inability shall not be presumed, but must be shown by the appellant.

19.

CODE, ARTICLE 5, SEC. 46.

In all cases of cross-appeals, or of more than one appeal being entered in the same case from any judgment, decree or order, there shall be but one transcript of the record transmitted to the Court of Appeals, and that shall be used upon the hearing of all such appeals. In cases arising under this rule, the Appellate Court shall have power

to award costs, including the cost of transmitting the record, to either of the parties in its discretion, or the costs may be apportioned as the said Court may deem just.

20.

CODE, ARTICLE 5, SEC. 47.

Whenever a case has before been in the Court of Appeals, there shall be copied into the transcript, upon any subsequent appeal, only the proceedings occurring in the Court below subsequent to the former appeal.

21.

CODE, ARTICLE 5, SEC. 52.

In all cases where a writ of diminution shall be issued, the clerk of the inferior Court, to which the writ may be sent, shall, in his return thereto, transmit to the Court of Appeals only so much of the proceedings remaining of record in the inferior Court as may be necessary to correct the alleged errors or defect in the transcript first sent to the Court of Appeals.

22.

CODE, ARTICLE 5, SEC. 73.

The appeal allowed by Sec. 374 of Article 23 of the Code of Public General Laws, shall be taken within thirty days from the date of the judgment or determination of the Court appealed from; and the transcript of the record shall be transmitted to this Court within thirty days from the day of the appeal entered.

23.

CODE, ARTICLE 5, SEC. 74.

The appellant or appellants, if the defendant or defendants in the cause, upon praying such appeal, in order

to stay the execution or enforcement of the judgment appealed from, shall tender and file in the cause an appeal bond, in such form and with such sureties, as may be approved by the Court, the penalty in such bond not to exceed, in any case, the sum of ten thousand dollars.

24.

CODE, ARTICLE 5, SEC. 53.

All appeals shall be brought into this Court by transcripts of the records of the Courts below, as contemplated by the Constitution, and shall be made up as directed by the Rules of this Court and by statute. Before the Clerk shall be required to have any transcript in any civil case printed, the appellant or appellants shall, upon being informed of the amount of the cost, pay or secure to be paid to the Clerk the amount of such cost, so that the Clerk shall not be required to pay out money for printing and incur the risk of loss in not being able to collect the cost from the parties from whom it may be due, after the work is done. And if there be cross-appeals, or more than one appeal, embraced in one transcript, the cost shall be duly apportioned; and no appeal shall be considered as ready for hearing until this rule shall be complied with by the appellant or appellants. But nothing herein contained shall be taken to prevent the appellee from having the appeal dismissed, or the judgment, order or decree affirmed, under rule of Court, for failure on the part of the appellant to have the appeal ready for argument.

APPEALS IN CRIMINAL CASES.

25.

SEC. 1. In criminal cases an appeal or writ of error allowed by law shall be taken within ten days from the date of the judgment or sentence.

ORDER OF COURT

AMENDING RULE NO. 24 AS TO COLLECTION OF CLERK'S COSTS.

ORDERED by the Court of Appeals this 15th day of October, 1936, that beginning with appeals entered after the 1st day of November, 1936, the clerk shall, when collecting from appellants the costs of printing transcripts of records under Rule No. 24, collect in addition from the appellants and each of them, the clerk's fees which will be payable by each as then estimated.

For the Court,

CARROLL T. BOND,
Chief Judge.

Filed: October 15th, 1936.

SEC. 2. When there are no bills of exceptions the transcript of the record shall be transmitted to this Court within thirty days after the entry of the appeal or suing out of the writ of error.

SEC. 3. Bills of exceptions shall be presented to and signed by the trial Court within twenty days from the date of the appeal or writ of error entered, provided that the trial Court, in its discretion, may extend the time for signing said bills of exceptions for an additional period of ten days, by order signed within the original period of twenty days herein allowed.

SEC. 4. Within thirty days from the date upon which the bills of exceptions are signed, the transcript of record shall be transmitted to this Court; and the case shall be heard at the earliest convenient day after the record is transmitted to this Court, either during the term at which the transcript is received or at the first term thereafter, unless continued for cause.

SEC. 5. Criminal cases may, by order of this Court, or on motion of the Attorney-General or counsel for the accused, be advanced so as to be disposed of without unnecessary delay.

APPEALS FROM PRO FORMA ORDERS.

26.

This Court will not entertain or consider any appeal taken from a pro forma order, decree or judgment, but will treat every such appeal as prematurely taken, and will dismiss the same whenever it appears on the face of the record, or otherwise, that the appeal is from such pro forma order, decree or judgment.

RULES SPECIALLY APPLICABLE TO PRACTICE IN THE COURT OF APPEALS OF MARYLAND, ADOPTED BY SAID COURT.

DOCKETS.

27.

SEC. 1. In preparing the Court Docket for each term, the Clerk shall place the cases on said Docket in the order in which the transcripts of record are received by him, without regard to the Judicial Circuits from which they are received, unless otherwise ordered by the Court.

SEC. 2. Two weeks before the beginning of each term he shall have printed in the Daily Record of Baltimore, a list of all cases filed by that time which have not been heard, including those continued from the previous term and those ordered to be reargued, which list so printed in the Daily Record shall be sent to attorneys as the preliminary dockets have heretofore been sent; and all cases afterwards received, before the beginning of the next term, shall be added to the list in the above order and included with it in the Court Docket.

SEC. 3. The Clerk shall not place upon the Court Docket of either of the terms of this Court any case unless the record therein shall have been actually filed in his office before the first day of such term; and all records filed on or after the first day of the term shall be placed on the docket of the next succeeding term; provided, however, that nothing in this rule contained shall apply to cases or appeals allowed under Sections 31 and 42 of Article 5 of the Code of 1911, or to any other cases or appeals where, by Statute or the Rules of this Court, the appeal may be heard during the same term to which the record shall be transmitted.

28.

Beginning the first Tuesday of each term, cases will be called for argument in their numerical order, as they

appear on the Court Docket. No more than five cases will be called for argument on any one day, nor will any case be taken up out of its course in prejudice to the call of any subsequent case, unless entitled to a preference by law, or for sufficient cause appearing to the Court; and all cases reached in the regular call of the docket must be finally disposed of unless continued or postponed for cause shown, or by consent of the parties.

29.

Cross-appeals, and writs of error by both parties, will be called and heard at the same time, and will be regarded as one case in making assignments under Rule 28.

CONTINUANCE.

30.

No cases will be continued for more than two terms without the mutual consent of the parties in open Court, or their written order to that effect, and if any case be so continued, it must be argued or submitted during the third term after the transmission of the record, unless by leave of Court it be continued to a subsequent term. Unless such leave be obtained, the case shall not be placed on subsequent Court dockets without an order of the Court, and upon the expiration of three terms of Court after it is so dropped the appeal shall be dismissed, unless otherwise ordered by the Court, before the expiration of the third term.

COUNSEL, APPEARANCES, ETC.

31.

SEC. 1. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel who appeared below shall be entered, excepting of such as have directed their appearance to be stricken out in the Court below, as shown by the rec-

ord, or have ordered the Clerk of this Court not to enter their appearance, and other appearances may be entered on the written order of counsel filed with the Clerk of this Court.

SEC. 2. Where no counsel appears, and no brief has been filed for the appellant or plaintiff in error, when the case is called for argument the appellee, or defendant in error, may have the appellant, or plaintiff in error, called and the appeal or writ of error dismissed, or may have an affirmance of the judgment, order or decree.

SEC. 3. Where the appellee, or the defendant in error, fails to appear when the case is called for argument, the Court may proceed to hear an argument on the part of the appellant, or the plaintiff in error, and to give judgment according to the right of the case.

32.

When a case shall be called in its regular order and the counsel for the appellant, or plaintiff in error, whose appearance is entered, shall be absent, the opposing counsel, if present and ready to be heard, may argue the case orally, or submit it on brief, or he may have an affirmance of the judgment if no brief has been filed for the appellant, or the plaintiff in error.

If the counsel for the appellee, or defendant in error, whose appearance is entered, be absent, the opposing counsel, if present and ready to be heard, may argue the case orally, or submit it on brief, or he may claim a continuance if no brief has been filed by the appellee, or defendant in error.

33.

Counsel on either side, not otherwise in default, prevented from arguing any case argued or submitted on the other side when called in regular order, may with leave of the Court argue the case on notes to be filed within six days thereafter; and the counsel for the ad-

verse party may then conclude by replying in the same manner within the next six days.

34.

The argument of cases regularly called will not be postponed on account of the absence of counsel on either side, unless such absence be occasioned by sickness or other sufficient cause.

35.

In all cases where judgments are affirmed by reason of default, the judgment so affirmed will not be stricken out unless the Court be satisfied that the absence of counsel and his failure to file a brief as required by the Rules of this Court, were unavoidable by reason of sickness or other sufficient cause.

RECORDS.

36.

SEC. 1. When a transcript of a record is received by the Clerk, he shall as soon as possible notify the attorney for the appellant or the appellant himself, of the amount of the cost of printing the same, and such amount shall be paid, or secured to be paid, to the Clerk within ten days from the receipt of such notice at the office of the attorney to whom it is sent or by the appellant himself if sent to him, unless the time be extended by agreement of counsel or the order of this Court. Upon receipt of such payment the Clerk shall forthwith direct the printer to print thirty copies of the record and require him to print the same promptly, so that they may be furnished counsel as soon as possible. Upon their receipt a copy shall at once be sent to each attorney whose appearance is entered in the case, and the Clerk shall take note of the manner and time of transmission.

SEC. 2. The Clerk shall require the records to be printed in conformity with the following specifications.

Paper: Shall be of good quality, dull unglazed surface, capable of taking ink without running and equivalent in weight to that of 25 x 38, 60 lbs. to the ream; the record pages to be 6⅛ x 9¼ when delivered.

Type: 24 picas wide by 48 picas deep, type to be set solid in 11 point.

In all Q. and A. matter the question shall begin a paragraph and the A. matter shall follow as a sentence. Captions to be set in lower case italic, closely set. Leading: 4 points between the paragraphs, and no more than two leads, equal to 4 points.

Cover: The cover must be so light in color as to permit writing in ink thereon to be easily read, and so firm in texture that the ink will not run.

The Clerk shall deduct or require a refund from the printer of any excess of printing costs charged by violation of this rule.

37.

No paper shall be read or referred to as a part of the record in the argument of any case without consent of the counsel and leave of the Court, unless such paper be copied into and made part of the transcript filed with the Clerk, or unless for special reasons the Court so authorizes.

BRIEFS AND ARGUMENT.

38.

SEC. 1. In all cases to be argued, the counsel shall furnish the Clerk with printed briefs in time to have them ready for use when the case is reached in its regular order, unless prevented by sickness or other sufficient cause, which briefs shall be printed with clear readable type and on good paper of a size suitable for binding with the records; and if either party shall fail to comply with this requirement, the one not in default may have

the judgment affirmed absolutely or the case continued at the cost of the other party, or may argue it as if no counsel appeared of record for the opposite side.

SEC. 2. Counsel shall furnish copies of their briefs to opposing counsel not less than three days before the case is called for argument, unless such time be waived in writing; and upon failure of either party to comply with this section the one not in default may have the case continued, at the cost of the other party, or may proceed with the oral argument and file within six days thereafter a printed argument in reply to the brief of the other side—the cost of printing the same to be taxed against and recovered from the party in default.

39.

SEC. 1. Each brief shall be prefaced by a short statement showing the nature of the case and:

(a) Each question presented for the Court's decision;

(b) The decision of the trial Court on every such question;

(c) Conclusion sought to be maintained on each question, with an orderly, summary statement of points to be made in the argument in support of the conclusion.

SEC. 2. Then shall follow a concise statement of the facts out of which the questions arise, indicating those which are in dispute, and supporting the contentions of fact made in the brief by references to those portions of the record of which the contentions rest.

SEC. 3. The argument shall follow the statement of facts, and shall deal separately with each of the questions presented, but shall not be unduly extended.

SEC. 4. Questions and exceptions not argued may be treated by the Court as abandoned. Counsel will be expected to present the results of an adequate examination of former relevant decisions of this Court; and to test, by

examination of the decisions, any summary statement from a digest or encyclopedia of law which they may cite in support of their contentions. The Court will expect counsel to limit their citations to those authorities which, upon a careful examination, have been found apposite to the precise points made, and to refrain from copying citations which counsel themselves have not scrutinized.

SEC. 5. The appellant's brief shall contain a convenient index of the record.

SEC. 6. The Court will exclude from the awarded costs any part of the cost of a brief which it deems excessive.

40.

CODE, ARTICLE 5, SEC. 55.

Either party may file written or printed arguments in any cause pending in the Court of Appeals, but the cost of such arguments shall not be taxed as part of the cost of the cause excepting as provided for in Rule 38. A sufficient number of printed copies of the argument shall be furnished for the Court, the counsel concerned, the Reporter and the Clerk. If the party filing the argument thinks proper, he may have the printing done on the best terms he can make; provided it be in good, clear, readable type; but if the Clerk of the Court of Appeals be required to have the argument printed, he shall be entitled to charge therefor the actual cost of printing the same, and be entitled to demand the amount of said cost before having the same printed. But in no case shall a brief or argument be received, either through the Clerk or otherwise, after the cause has been argued or submitted, unless it be upon special leave granted in open Court, after notice to opposing counsel.

41.

SEC. 1. Not more than two counsel will be permitted to argue any case on the same side, nor will they be

allowed more than forty-five minutes each, unless for reasons appearing before beginning the argument the Court grants a longer time provided, however, that when only one counsel appears for the appellee, counsel for the appellant shall be allowed forty-five minutes in opening and thirty minutes in closing, and when one counsel appears for the appellant and two for the appellee the appellant's counsel may have forty-five minutes in opening and forty-five minutes in closing.

SEC. 2. When no oral argument is made for one side, only one counsel will be heard for the adverse party.

42.

In case of cross-appeals, or writs of error by both sides, the counsel for the appellant, or plaintiff in error, first in order on the docket will open the argument, and conclude after an opening by the counsel for the appellant, or plaintiff in error, in the second appeal, after which the counsel for the appellant or plaintiff in error in the second appeal will conclude.

REARGUMENT.

43.

SEC. 1. No motion for reargument will be entertained unless a petition, distinctly stating the grounds for the same, be filed within thirty days after the opinion of the Court has been delivered; and no reargument will then be allowed unless a majority of the Judges who concurred in the opinion consent to it. An opportunity will be given the opposite party to file a reply to such motion, if any member of the Court who concurred in the opinion requests it before the motion is acted on.

SEC. 2. A motion for a reargument shall not prevent the issuance of a *fieri facias*, or other writ, or otherwise stay the proceedings, unless so ordered by the Court.

SEC. 3. No writ shall issue, or other proceedings be taken (excepting remanding the cause) within thirty days

from the time the opinion is delivered without leave of the Court.

NO ORIGINAL PAPER TO BE DELIVERED BY CLERK.

44.

The opinions of the Court, filed with the Clerk, will be delivered by him to the Reporter when required for printing in the State Reports, and transcripts of records will be delivered by him to the printer for printing the records, but they shall be returned as speedily as possible to the Clerk for preservation. The Clerk will deliver no other original paper out of his office without leave of the Court.

DIMINUTION.

45.

No writ of diminution will be hereafter granted, unless a motion therefor shall be made in writing, stating the facts on which the same is founded, and if such facts are not admitted by the counsel for the other party, they shall be verified by the affidavit of the counsel for the party making such application. Said application shall also state that the correction is in the opinion of counsel for the party applying for said writ necessary to the trial of the merits of the case, that it cannot be had without said writ of diminution and that the suggestion is not made for the purpose of delaying the argument of the case.

46.

No case will be postponed or continued on account of any diminution alleged to exist in the transcript of a record, unless the Court be satisfied that there was no unreasonable delay in making application for the writ, and that the additional record cannot be supplied in time for argument, and in such case the Court may, in its discretion, direct the argument to proceed and permit the additional record to be afterwards filed, when it shall

have the same effect as if transmitted with the original record, but if the Court determines that the writ was unnecessary, the cost will be imposed on the party at whose instance it was granted.

MOTION TO DISMISS APPEAL.

47.

All motions to dismiss appeals shall be filed at least five days before the cases are called for argument, unless the motion be based on some cause arising after that time—provided that this rule shall not be construed to prevent the Court from dismissing an appeal on its own motion when that is deemed proper.

48.

The Clerk of this Court shall procure and keep a separate record to be known as "The Rules of Court" in which the aforegoing rules and all amendments, alterations and modifications of them, hereafter adopted, shall be recorded.

ORDERED, this 5th day of October, A. D. 1933, by the Court of Appeals of Maryland, that the foregoing Rules respecting appeals be and they are hereby adopted in lieu of the Rules of said Court now in force relating to appeals and the amendments thereto.

CARROLL T. BOND, *Chief Judge*
JNO. R. PATTISON,
HAMMOND URNER,
WM. H. ADKINS,
T. SCOTT OFFUTT,
W. MITCHELL DIGGES,
F. NEAL PARKE,
D. LINDLEY SLOAN,
Judges.

JAMES A. YOUNG,
Clerk.

GENERAL EQUITY RULES
AND
INDEX

ORDER OF COURT

AMENDMENT TO RULE 43.

Ordered by the Court of Appeals of Maryland this second day of July, 1935, that Section 1 of Rule 43 of the Court be amended by the addition at the end of the following sentence:

> A motion and any reply shall be accompanied by copies to the number of the judges who heard the original argument in the case.

The section as a whole shall then read:

REARGUMENT.

43.

Sec. 1. No motion for reargument will be entertained unless a petition, distinctly stating the grounds for the same, be filed within thirty days after the opinion of the Court has been delivered; and no reargument will then be allowed unless a majority of the Judges who concurred in the opinion consent to it. An opportunity will be given the opposite party to file a reply to such motion, if any member of the Court who concurred in the opinion requests it before the motion is acted on. A motion and any reply shall be accompanied by copies to the number of the judges who heard the original argument in the case.

Carroll T. Bond,
Hammond Urner,
T. Scott Offutt,
F. Neal Parke,
D. Lindley Sloan,
Walter J. Mitchell,
Wm. Mason Sheehan,
Benj. A. Johnson.

Filed July 2nd, 1935.

INDEX

GENERAL EQUITY RULES

EQUITY COURTS ALWAYS OPEN.

DUTIES OF THE CLERK.

1.

Code, Art. 16, Sec. 154.

The Circuit Courts for the several counties of this State, and the Circuit Court of the City of Baltimore, and the Circuit Court Number Two of the City of Baltimore, as courts of equity, shall be deemed and taken to be always open for the transaction of business therein, and the several regular terms of said courts for the return of process and other practical purposes shall be of two months' duration, and shall commence in the counties on the first Monday of January, of March, of May, of July, of September, and of November of each year; and in Baltimore City shall commence on the second Monday of January, of March, of May, of July, of September, and of November of each year.

2.

Code, Art. 16, Sec. 155.

The several clerks of said Courts shall receive and file all papers pertaining to said Courts, respectively, and shall keep substantial dockets, and make all proper entries therein, of papers filed, and of the proceedings of the said Courts, as they occur; so that the docket entries shall always show, as near as possible, the real condition and progress of the proceedings.

PROCEEDINGS—HOW COMMENCED.

3.

CODE, ART. 16, SEC. 156.

All original proceedings in said Courts shall be commenced by bill, or by special case stated, as hereinafter provided for; and the term "bill" shall embrace petition or information, where, by statute, or the established practice, petition or information be proper.

4.

CODE, ART. 16, SEC. 157.

No order or process shall be made or issued upon any bill, petition, or other paper, until such bill, petition, or other paper, together with all the exhibits referred to as parts thereof, be actually filed with the Clerk of the Court. Nor shall any injunction or restraining order, or order appointing a receiver issue until the originals or duly certified copies of all deeds, or other instruments of record, and verified copies of all documents, papers or writings not of record, necessary to show the character and extent of the complainant's interest in the suit shall have been filed, if said instruments of writing be in possession of the plaintiff or accessible to him; if not, that fact shall be stated in the bill or petition.

FRAME OF BILLS GENERALLY.

5.

CODE, ART. 16, SEC. 168.

Every bill or petition shall be expressed in terms as brief and concise as it reasonably can be, and shall contain no unnecessary recitals of documents of any kind, in *haec verba*, or any impertinent matter, or matter scandalous and not relevant to the suit; and the same rule shall apply to all answers filed by defendants; and

if this rule be violated, the unnecessary or improper matter or averment may, by order of Court, upon motion or upon its own initiative, be stricken out at the cost of the party introducing the same. The signature of a solicitor of record to any bill or other pleading shall be considered as a certificate of such solicitor that he has read the paper so signed by him, and that upon the information and instructions laid before him regarding the case there is good ground for the same and it is not filed for delay, or other improper purpose.

6.

Code, Art. 16, Sec. 169.

All bills and petitions in the introductory part thereof shall contain the names of all the parties, plaintiffs, and defendants, by and against whom the suit is brought. The form shall be substantially as follows:

In the Circuit Court for County

A. B., Plaintiff

against

C. D., Defendant.

To the Honorable, the Judges of said Court:

Your orator, complaining, says:

1. That, &c., making each paragraph contain a succinct but a complete statement of fact.

7.

Code, Art. 16, Sec. 170.

All bills and petitions shall be divided into paragraphs, as indicated in the preceding rule, and be consecutively numbered, and shall contain simply a statement of the facts upon which the plaintiff asks relief, and, at his option, the facts which are intended to avoid an anticipated defense, and such averments as may be necessary, under the rules of Equity pleading, to entitle the plaintiff

to relief, and the prayer for relief shall specify particularly the relief desired, and shall also contain the prayer for general relief. And if an injunction, or other writ, or any special order, be required, pending the suit, it shall be specially prayed for, the several subjects of the prayer being formed into distinct paragraphs, and consecutively numbered. The ordinary or formal combination clause, the allegation of the want of remedy at law, and similar formal averments, shall be omitted; nor shall it be necessary to pray that the defendants be required to answer unless it be desired that they shall answer under oath, or there be special interrogatories appended to the bill, to be answered by the defendants, or some of them, in which cases there shall be a prayer that the defendant or defendants be required to answer the bill, or the special interrogatories appended thereto under oath.

8.

CODE, ART. 16, SEC. 171.

The prayer for process, or for order of publication, shall contain the names of all the defendants named in the introductory part of the bill or petition, and the place of their residence, as far as known; and if any of said defendants are known to be infants under age, or under any other disability, such facts shall be stated, so that the Court may take order thereon, as justice may require. And if an injunction, or other writ, or any special order be asked in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

9.

CODE, ART. 16, SEC. 162.

All infants and other persons under any disability to sue, may sue by their guardian or committee, if any, or by their *prochein ami*, subject, however, to such orders

as the Court or Judge thereof may direct for the protection of infants and other persons; but before the name of any person shall be used in any suit to be instituted as next friend of any infant or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill or other proceeding.

PROCESS—SERVICE AND RETURN.

10.

The process and mode of publication for giving notice to appear, and for procuring the appearance of parties, shall be the same as that now provided by law, except as the same may be changed or modified by these rules, or by statute.

11.

CODE, ART. 16, SEC. 158.

Whenever a bill is filed, wherein an order of publication is not prayed, the Clerk shall issue the process of subpoena thereon as of course, upon the application of the plaintiff, which shall contain the names of the parties, and be made returnable in the several counties on the first Monday of the month ensuing the date of its issue, and in Baltimore City shall be made returnable on the second Monday of the month ensuing the date of its issue, but the plaintiff may, by special direction, require any process to be made returnable at the return day next after the first return day for such process ensuing the issuance of the same. At the bottom of the subpoena shall be placed a memorandum that the defendant is required to file his answer or other defense in the Clerk's office within fifteen days after the return day. The Sheriff or other person whose duty it may be to serve said process shall serve the same promptly. Where there is more than one defendant, the writ of subpoena may,

at the election of the plaintiff, be sued out separately for each defendant, or a joint subpoena against all the defendants may be issued.

In default of answer as provided in this rule the bill may be taken *pro confesso*, unless the time for filing the answer be extended as provided in Rule 15.

12.

Whenever any subpoena shall be returned not served as to any defendant, the plaintiff shall be entitled to other subpoenas against such defendant.

13.

CODE, ART. 16, SEC. 160.

The service of process to require appearance shall be by reading, and delivering a copy of, the summons or other writ or order to the party to be served therewith; and in case the party be an infant or *non compos mentis*, in addition to the service on such party, a copy of the process or writ, or order, shall be left with the parent or guardian of the infant, if there be one within the jurisdiction of the Court, and with the committee or other person having the care of the person or estate of the party alleged to be *non compos mentis*; and such service shall be specially certified in the return of the officer making the service.

APPOINTMENT OF GUARDIAN OR NEXT FRIEND.

14.

CODE, ART. 16, SEC. 161.

Upon return of process as served, or upon proof of due publication of the order of publication as against non-resident defendants, the Court shall, in case of an infant or non-sane defendant, on application of the plaintiff, or any other party concerned, by order either require

the legal guardian or committee of the infant, or non-sane defendant (if there be such guardian or committee within the jurisdiction of the Court) to appear, answer and defend for such party, or appoint a guardian *ad litem* to answer and defend the suit for such party. And in appointing guardians *ad litem*, no person shall be appointed who may have any interest whatever involved in the suit adverse to that of the party so under disability. The Court or Judge thereof may, in any case, wherever it may be deemed necessary, appoint a solicitor, to appear and defend for any infant or non-sane defendant. All commissions for taking answers or to plead shall be and they are hereby abolished.

DEFENDANT TO ANSWER—DEFAULT—DECREE PRO CONFESSO.

15.

It shall be the duty of the defendant, unless the time be enlarged, by an order of Court upon petition showing good cause therefor, to file his answer or other defense to the bill in the Clerk's office within the time required by Rule 11. In default thereof the plaintiff, may at his election, take an order as of course that the bill be taken *pro confesso*, and thereupon the case shall proceed *ex parte* as against such defendant.

16.

When the bill is taken *pro confesso*, a final decree may be entered at any time after the expiration of thirty days from the entry of the order of *pro confesso*, if no answer or other defense be interposed, and the allegations of the bill or petition present a proper case for relief. But the Court or the Judge thereof may, in all such cases, if it be deemed proper, order that the allegations of the bill or petition, or any of them, be supported by affidavit or deposition to be taken as may be directed.

And the Court shall have power at any time within thirty days from the date on which the decree *pro confesso* shall have been entered, excluding the day thereof, and before final decree, upon motion or upon its own initiative, to set aside the decree, and permit the filing of an answer or the interposing of other defense. But such motion shall only be granted upon the payment of the costs of the plaintiff up to that time, unless the Court by its order shall relieve the defendant of the payment of such costs, or such part thereof as the Court shall deem reasonable, and upon such terms as the Court shall prescribe for the purpose of speeding the cause. In all cases in which an order of publication shall have been passed and in which the notice by publication therein prescribed shall have been given, it shall be the duty of such defendant to file his answer or other defense within fifteen days after the time limited by such order for his appearance, and in default thereof the bill or petition may be taken *pro confesso*, and the case shall proceed against him as above provided in these rules with respect to other defendants in default.

AMENDMENTS.

17.

CODE, ART. 16, SEC. 17.

The Court shall at any time before final decree, in furtherance of justice and upon such terms as to payment of costs as may be just, permit any bill, answer, process, proceeding, pleading, or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The Court at every stage of the proceeding shall disregard any error or defect in the proceedings or pleadings which does not affect the substantial rights of the parties. A further and better statement of the claim or defense or further and better particulars of any matter stated in any pleading may be permitted upon order of Court.

DEFENSE—HOW PRESENTED.

18.

Code, Art. 16, Sec. 173.

Pleas are hereby abolished. Every defense in point of law arising upon the face of the bill or petition, whether from misjoinder, nonjoinder or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea, shall be made by demurrer or by answer; and every point of law, raised by demurrer, may be made to the whole or a material part of the cause or causes of action stated in the bill. No demurrer shall be allowed to be filed to any bill, or part thereof, unless it be supported by affidavit that it is not intended for delay. The form of demurrers shall be substantially as follows: "The defendant demurs to the whole," or "to so much of the bill, or petition, or discovery, or relief," stating the particular part or parts demurred to, and the special grounds of demurrer. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer, and may be separately heard and disposed of before the trial of the principal case in the discretion of the Court. If any defendant demur to the bill, or any part thereof, the demurrer may be set down for hearing by either party upon five days' notice, and if overruled the defendant shall answer within five days thereafter, unless a longer time be allowed by the Court. In any case, however, if the Court or Judge hearing the demurrer shall declare in writing on overruling the demurrer that he is satisfied that the same was intended for vexation, or delay, or is frivolous, or unfounded, the bill shall be taken *pro confesso* as against the party filing the demurrer, and the matter thereof proceeded in and decreed accordingly, as provided in these rules with respect to defendants in default.

19.

CODE, ART. 16, SEC. 176.

If upon hearing, any demurrer shall be allowed, the Court may, in its discretion, upon motion of the plaintiff, allow him to amend the bill upon such terms as it shall deem to be reasonable.

ANSWER.

20.

CODE, ART. 16, SEC. 179.

The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, and such statement shall operate as a denial. He shall make answer to all the material allegations. The answer shall be divided into paragraphs, numbered consecutively, each paragraph containing, as near as may be, a separate and distinct averment. The defendant shall be entitled in all cases by answer to insist upon all matters of defense in law or Equity, to the merits of the bill of which he may be entitled to avail himself by demurrer. Averments, other than the value or amount of damage, if not denied, shall be deemed to be confessed, except as against an infant, lunatic, or other person *non compos* and not under guardianship, but the answer may be amended by leave of the Court or the Judge thereof, upon reasonable notice so as to put any averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

REPLICATION—WHEN REQUIRED—WHEN CAUSE AT ISSUE.

21.

No replication shall be required without special order of the Court or Judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff.

22.

In every case where an amendment to the bill shall be made after answer filed, a written notice of such amendment, or a copy thereof, shall be served upon the defendant or his solicitor of record, and the defendant shall, if so ordered by the Court, put in a new or supplemental answer within such time as the Court may allow; and upon a default, the like proceedings may be had as upon an omission to put in an answer.

23.

Exceptions for insufficiency of an answer are abolished. All questions heretofore available by exceptions to an answer shall be presented by demurrer to the answer. The demurrer shall be supported by an affidavit that it is not intended for delay. It may be filed to the whole, or to any part of the answer, and be in the form prescribed for demurrer to a bill as provided in Rule 18. Either party may set the demurrer for hearing upon five days' notice. If the answer or any part thereof be found insufficient, but amendable, the Court may allow an amendment upon such terms as it may prescribe.

24.

Upon application of either party the Court or Judge may upon reasonable notice and such terms as are just, permit him to file a supplemental pleading, alleging

material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent Court rendered after the commencement of a suit determining the matters in controversy or a part thereof.

SPECIAL INTERROGATORIES.

25.

CODE, ART. 16, SEC. 180.

Special interrogatories to the defendant shall not be incorporated in the bill or petition, but shall be appended thereto; and they shall be divided as conveniently as may be, and numbered consecutively. And if there be more than one defendant, and the interrogatories are not intended to be answered by all, it shall be designated which defendant is required to answer the several interrogatories. And in like manner and form, any defendant shall be entitled to file interrogatories to any of the plaintiffs, after he shall have put in his answer to the bill; and such interrogatories, either to plaintiff or defendant, and the answer thereto, shall be deemed part of the pleadings in the cause. Notice by service of copy, or otherwise, shall be given to the party required to answer, who shall answer within *fifteen* days from the time of service, unless the time, for cause shown, be extended by special order; and answers to such interrogatories may be compelled by attachment.

26.

CODE, ART. 16, SEC. 181.

Either plaintiff or defendant shall be at liberty to decline answering an interrogatory, or part of an interrogatory which he shall consider or be advised by counsel relates to matters which are not admissible or proper, or from disclosing which he is protected by law; and he shall be at liberty so to decline notwithstanding he shall

answer other interrogatories; and upon such declination, the plaintiff or defendant may, on three days' notice set down the matter for hearing before the Court or Judge thereof. But when interrogatories, or any of them are not fully answered, the objection to the insufficiency of the answer may be set down for hearing before the Court or Judge upon motion to be filed in which the particular objections to the answer shall be pointed out, and the objections shall be heard by the Court at such time and upon such notice as the Court or Judge may deem reasonable. The plaintiff or defendant shall be at liberty, before answers to the interrogatories are filed, to proceed to take testimony, without waiver of his right to such answers, or of his motion respecting the same.

27.

When the time prescribed by these rules for doing an act expires on a Sunday, or a legal holiday, such time shall extend to and include the next succeeding day that is not Sunday or legal holiday.

PARTIES.

28.

Code, Art. 16. Sec. 196.

In all cases where the plaintiff may have a joint and several claim or demand against several persons, either as principals or sureties, it shall not be necessary to bring before the Court, as parties to a suit concerning such claim or demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable. But the defendant may at once proceed by petition, in the nature of a cross-bill, against such party as is liable jointly with him, and such party shall be permitted to make himself a party to the original cause, and defend the same, and the proceedings in the original cause shall, after the service of such petition,

be conclusive as to such other party, and if he shall appear thereto, the same shall be conducted as if he had been made a party thereto in the first instance.

29.

CODE, ART. 16, SEC. 197.

In all suits concerning real or personal estate, where the entire estate sought to be affected by the decree or order prayed for, is vested in trustees, under any deed, will, or other instrument, with an immediate and unqualified power of sale, coupled with the right to give receipts, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trust, parties to the suit. But any party interested may, upon his own application, be allowed to come in and be made a party to such proceeding, and the Court or Judge thereof may, upon consideration of the matter on the hearing, if it should be deemed proper, order such persons, or any of them, to be made parties.

30.

The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there are more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. If it appear that any such causes of action can not be conveniently disposed of together, the Court may order separate trials.

31.

Code, Art. 16, Sec. 198.

It shall not be necessary to dismiss the entire bill or petition in any suit, because simply of the misjoinder of parties or the subject-matter of the suit; but the Court may dismiss the bill or petition, as to such of the parties, plaintiff or defendant, as may be improperly joined, and may dismiss the bill or petition, as to such of the subject-matter as may be improperly joined or included therein, so as to relieve the bill or petition of the objection of being multifarious. And the Court may, according to the special circumstances of the case, to meet the requirements of justice, and to prevent a multiplicity of suits, decree as between the plaintiffs, as if they occupied positions of plaintiff and defendant upon the record, and may so decree as between co-defendants to the cause; provided such decrees shall be founded upon the allegations of the pleading between the plaintiffs and defendants, and have immediate connection with the subject-matter of the suit.

32.

Code, Art. 16, Sec. 199.

If a defendant shall, at the hearing of the cause, object that the suit is defective for want of parties, not having by demurrer or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the Court or Judge thereof, if it be deemed proper, shall be at liberty to make a decree, saving the rights of the absent parties, or may require the plaintiff to bring in such absent party, upon such terms as the Court may prescribe as to cost.

33.

CODE, ART. 16, SEC. 200.

Where the defendant shall, by his demurrer or answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty within fifteen days after answer filed, to set down the cause for argument upon that objection only; and the clerk, at the instance of the plaintiff, shall make entry thereof in his docket in the following form: "Set down upon the defendant's objection for want of parties." And if the plaintiff shall not set down the cause, but shall proceed therewith to a hearing, notwithstanding the objection for want of parties when taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection for want of parties be then allowed, be entitled as of course, to an order for liberty to amend his bill by adding parties; but the Court or Judge thereof may, if it be thought fit, dismiss the bill. If, however, the cause be set down upon the objection taken, and, upon hearing, the objection be allowed, the plaintiff shall have liberty to amend, upon paying the cost of amendment.

EVIDENCE—HOW TAKEN.

34.

CODE, ART. 16, SEC. 269.

Except where testimony is to be taken beyond the limits of the State, or beyond the limits of the county or city for which the Court exercises jurisdiction, no commissions to take testimony shall issue. The Circuit Court for each of the counties, and the Supreme Bench of Baltimore City shall each appoint two or three experienced and competent examiners, who shall, upon qualification, be officers of the Court; and for any special reason, a special examiner may be appointed. These examiners shall have authority to issue subpoenas for

witnesses, administer oaths, notify parties of the time of their sittings, and to preserve order and decorum during their sessions. Any persons refusing to obey subpoenas issued by such examiners, or who shall be guilty of violating the order and proper decorum of the sessions of said examiners while in the discharge of their duties, shall be reported by the examiners, together with the facts of the case, to the Court; and, upon hearing, the Court, if satisfied of the facts as reported, and that the party was guilty of the matter charged, shall punish the party so offending.

Such examiners shall be entitled to receive four dollars per day, for each and every day actually employed; to be paid by the party at whose instance the service may have been rendered. And it shall be the duty of such examiners, in making their returns to the Court, in each case, to certify the time that they may have been actually employed, and at whose instance, and the amount taxable to each party for services rendered.

35.

Code, Art. 16, Sec. 270.

Whenever any cause is at issue, involving matter of fact, or whenever any evidence is required to be taken, to be used in any proceeding in equity, it shall be competent to the party desiring to take evidence to notify one of the regular examiners, or any special examiner that may be appointed, of such desire, and to furnish him with the titling of the cause and the names of witnesses to be summoned to testify; and the examiners so applied to shall fix some reasonable day or days for the examination of witnesses, and the taking of evidence, of which he shall give due notice to the parties concerned, or those entitled to receive such notice, as if he were proceeding under a commission to take testimony, under former practice, provided that for the taking of testi

mony in divorce cases leave shall first be obtained from the Court or a Judge thereof. The examiner shall issue subpoenas for witnesses for either party, except where he is required to proceed *ex parte;* and he shall cause to come before him all witnesses subpoenaed, at the time appointed, to be examined; and their attendance and duty to testify may be enforced by attachment, to be issued and returned as provided in Section 287 of Article 16 of the Code of Public General Laws.

36.

CODE, ART. 16, SEC. 271.

All examinations of witnesses before the examiners shall be conducted in the presence of the parties, or their solicitors, if they think proper to be present; and the mode of examination shall be either by written interrogatories filed with the examiner, to be by him propounded to the witnesses, and the answers thereto written down by him, as has heretofore been the practice of commissioners in taking testimony; or the witnesses may be examined by the parties, or their solicitors, *viva voce,* and in such case, the answers of the witnesses shall be reduced to writing by the examiner, and the questions also, if necessary to the understanding of the answers of the witness, or if it be required by either party. By agreement of the parties or by order of Court, in its discretion, the testimony may be taken in short-hand and afterward typewritten under the direction of the examiner. The testimony produced by both parties shall be taken before the same examiner, unless, for special reasons, it be otherwise directed by the Court or Judge thereof; and all *viva voce* examination shall, as near as may be, be conducted in the manner and order of the examination of witnesses in the trials of facts in the Courts of common law. The defendant shall not be compelled to proceed with the taking of his testimony, until the plaintiff has

finished, or declared he has none to take; nor shall the plaintiff be compelled to proceed with the rebutting testimony, until the defendant has completed the testimony on his part.

37.

CODE, ART. 16, SEC. 272.

In all examinations, whether conducted by written interrogatories or *viva voce*, at the conclusion of the examination by the parties, the examiner shall put to the witness an interrogatory in the following form: "Do you know, or can you state, any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer," And the examiner shall write down the answer to said interrogatory, as part of the deposition of the witness.

38.

CODE, ART. 16, SEC. 273.

In all cases the testimony shall be written down in the language of, and as delivered by, the witness, and be signed by him in the presence of the parties or their solicitors, or such of them as may attend, unless such signing be waived; but if the witness, for any cause, may not be able to sign the same, or shall for any reason refuse so to do, and the signature is not waived, the examiner shall sign the deposition, stating the reason why the witness has not signed the same; and the examiner may, upon all examinations, state any special matters to the Court that he may deem proper, to enable the Court the better to understand the evidence. Any question or questions that may be objected to by either of the parties shall be noted by the examiner upon the deposition; but

he shall not have power to decide on the competency, materiality or relevancy of any question proposed or evidence elicited, nor as to the competency or privilege of any witness offered. All questions of privilege raised, or demurrer interposed, by any witness, to questions propounded, shall be at once reported by the examiner to the Court or Judge thereof for decision, and the Court or Judge shall hear and determine the same without delay; and in such cases the Court may award cost as justice may appear to require; and in all cases the Court shall have full power to deal with and to direct the payment of the cost of incompetent, immaterial or irrelevant evidence, or any part thereof, as justice may require, apart from the general cost of the case.

39.

CODE, ART. 16, SEC. 274.

So soon as the examination of witnesses before the examiner shall be concluded, the original depositions, with all vouchers, documents, or other papers filed with the examiner as evidence, shall be put together in proper order and form, so as to be convenient for reference and use, and be authenticated by certificate and signature of the examiner, and by him enclosed, with the titling of the cause endorsed thereon, and filed with the Clerk of the Court, without delay; he shall also return properly authenticated all other exhibits filed with him as evidence.

40.

CODE, ART. 16, SEC. 275.

Testimony shall be taken without any unnecessary delay, and it shall be the duty of the examiner to avoid such delay as far as possible. After the lapse of a reasonable time for the taking of testimony, either party may obtain a rule on the adverse party to close the taking of his testimony within such reasonable time after notice

of such rule as may be deemed proper; and any testimony taken after the lapse of that time shall not be read in evidence at the hearing of the cause. But it shall be in the discretion of the Court to enlarge the time, on application of the party against whom such rule may have been obtained, upon sufficient cause shown.

41.

Code, Art. 16, Sec. 276.

Evidence taken and returned shall be opened by the Clerk, and shall remain in Court ten days, subject to exception, before the cause shall be taken up for hearing unless by agreement of the parties, such time be waived, but after the expiration of that time the cause shall stand for hearing, unless some sufficient cause be shown to the contrary. This rule not to apply to interlocutory applications.

42.

Code, Art. 16, Sec. 281.

Upon any petition, motion, or other interlocutory application, for the hearing and determination of which evidence may be required, the Court or Judge thereof may order testimony to be taken before an examiner, or before a justice of the peace, upon such notice, and in such manner as the Court or Judge may think proper to direct, to be used at the hearing of such matter.

43.

Instead of the mode of taking testimony provided in the preceding rules the witnesses, or any of them, may be examined orally in open Court as provided by Sections 178 and 179 of Article 16 of the Code of Public General Laws.

44.

CODE, ART. 16, SEC. 277.

The examination of witnesses *de bene esse*, or for the perpetuation of their testimony, when by law allowed, may be had before an examiner, in the mode and form as prescribed in Rules 37, 38, 39 and 40, and if no good objection be made to such testimony in twelve months from the time of the return to Court thereof, the Court shall order the same to be recorded in perpetual memory.

SPECIAL CASE STATED.

45.

CODE, ART. 16, SEC. 221.

Any person interested, or claiming to be interested, in any question cognizable by a Court of Equity, as to the construction of any statute, deed, or other instrument of writing, or as to any other matter falling within the original jurisdiction of such Court, or made subject to the jurisdiction thereof by statute, may state and raise such question before the Court in the form of a special case stated, instead of formal pleading. Every such special case stated shall be entitled as a cause between some one or more of the parties interested, or claiming to be interested, as plaintiff or plaintiffs, and the others of them as defendants; and such special case shall be regularly docketed as a cause pending in said Court, and shall be in all respects, and for all purposes, treated and regarded as a pending cause, as if regularly instituted by formal pleading.

46.

CODE, ART. 16, SEC. 222.

Such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question intended to be raised, and it shall be

divided into paragraphs, consecutively numbered; and upon the hearing of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated and referred to in such special case, any inference which the Court might have drawn therefrom, if such facts and documents were proved under formal pleading. And upon such special case stated, the Court may decree as upon bill and answer, and such decree shall be enforced as other decrees are but such decree shall in no case conclude or affect the rights of any other persons than those who are parties to such special case, and those claiming under or through such parties and the right of appeal shall exist as in cases of decrees upon bill and answer.

47.

Code, Art. 16, Sec. 223.

Married women may join in any special case stated with their husbands, and infants having guardians, and lunatics having committees, may join in such special case by their guardians or committees, in respect to any interest or right represented by such guardians or committees; and all the parties to such special case shall sign the same in person or by solicitor, and the appearance of the parties shall be entered to said case, as to a cause regularly instituted by formal proceedings; and all the parties to such special case shall be subject to the jurisdiction of the Court in the same manner as if the plaintiff in the special case had filed a bill against the parties named as defendants thereto, and such defendants had appeared to such bill, and by answer admitted the facts thereof.

REHEARING.

48.

CODE, ART. 16, SEC. 201.

All final decrees, and orders in the nature of final decrees, shall be considered as enrolled from and after the expiration of thirty days from the date of the same, the day of the date inclusive.

49.

CODE, ART. 16, SEC. 202.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before the enrollment of such decrees or orders, be corrected by order of the Court or Judge thereof upon petition, without the form or expense of a rehearing.

50.

CODE, ART. 16, SEC. 203.

Every petition for rehearing shall contain the special matter or cause on which such hearing is applied for, and shall be signed by solicitor or the petitioner himself, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the enrollment of the decree or decretal order; and if the decree or order has been executed, parties who have acted on the faith of such decree or order shall not be prejudiced by such decree or order being reversed or varied.

PROCEEDINGS BEFORE THE AUDITOR.

51.

CODE, ART. 16, SEC. 21.

Whenever a reference of any matter is made to the auditor for examination and report thereof, or for the

statement of an account, the party at whose instance the reference is made, shall, within a reasonable time and without any unnecessary delay, cause the matter of reference to be laid before the auditor for his action; and if such party shall omit to do so any other party interested in the subject-matter of the reference shall be at liberty to cause the matter to be laid before the auditor, who shall proceed therein without delay.

52.

Code, Art. 16, Sec. 22.

Upon every such reference it shall be the duty of the auditor, as soon as he reasonably can, after the matter of the reference is brought before him, if evidence is to be produced, or vouchers filed, to assign a time and place for proceeding in the matter, and to give notice thereof to the parties or their solicitors; and if either party shall fail to attend at the time and place appointed, the auditor shall be at liberty to proceed in the absence of such party, or, in his discretion, to adjourn the examination and proceeding to a future day, giving notice thereof to the parties or their solicitors, but noting all the cost that may attend such adjournment, which shall be subject to the order and direction of the Court. It shall be the duty of the auditor to proceed with all reasonable diligence in every such reference, and with the least practicable delay; and either party shall be at liberty to apply to the Court or a Judge thereof for an order to the auditor to speed the proceedings before him, and to make his report, and to certify to the Court the reasons for any delay that may have occurred.

53.

Code, Art. 16, Sec. 23.

The auditor shall regulate all the proceedings in every hearing or examination before him; and in addition to

his right and power to examine the parties to the cause, and all witnesses produced by them, or which they may cause to be summoned, on oath or affirmation touching the matters of the reference, he shall also have power and authority to require the production of all books, papers, writings, vouchers and other documents applicable thereto, where, by the principles and practice of Courts of Equity, the production of such writings may be compelled; and if any party so liable to produce such books, papers, writings, vouchers or other documents, shall fail or refuse so to do, when required by the auditor, such party shall, without delay, be reported to the Court by the auditor, with the facts of the case, that the proper proceeding may be taken thereon, by way of attachment or otherwise, as justice and the settled practice may require.

54.

CODE, ART. 16, SEC. 24.

All parties accounting before the auditor shall produce their respective accounts in the form of debtor and creditor, and any of the other parties interested, who shall not be satisfied with the account so produced, shall be at liberty to examine the accounting party, *viva voce*, or upon written interrogatories, before the auditor, who shall write down and report the testimony, if required. And in all cases where the auditor may be required to take testimony to be reported to the Court, he shall observe and pursue the same mode and form of examination, and writing down the testimony, as that prescribed to be observed by examiners.

55.

The foregoing rules shall be in force from and after the 12th day of January, A. D. 1931, and shall be taken to regulate all cases and procedure to which they are applicable; and all other cases and procedure not therein

provided for shall remain to be regulated and governed by the existing statute law of the State, and by the general rules and principles of equity pleading and practice, as heretofore existing, so far as the same may not be changed or modified, by the adoption of the foregoing rules. But nothing in the foregoing rules shall, in any manner, be taken or construed to prevent or restrict the several Circuits Courts, as Courts of Equity, from making and enforcing, from time to time, such general rules and orders as they may deem proper for the good government and regulation of their respective Courts and the proceedings thereof, and the officers and suitors therein; provided, that such rules and orders be not inconsistent with the foregoing rules, or the statutes of this State.

ORDERED, this 5th day of October, A. D. 1933, by the Judges of the Court of Appeals, that the foregoing General Equity Rules be and the same are hereby adopted, pursuant to the 18th Section of Article 4 of the Constitution of this State.

CARROLL T. BOND, *Chief Judge*

JNO. R. PATTISON,

HAMMOND URNER,

WM. H. ADKINS,

T. SCOTT OFFUTT,

W. MITCHELL DIGGES,

F. NEAL PARKE,

D. LINDLEY SLOAN,

Judges.

JAMES A. YOUNG,

Clerk.

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