Rules and Regulations Respecting Appeals,

General Equity Rules

AND

General Rules of Practice and Procedure

OF THE

Court of Appeals of Maryland

REVISED AND ADOPTED BY THE
COURT OF APPEALS
NOVEMBER 1, 1945

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RULES AND REGULATIONS RESPECTING APPEALS

MADE AND PRESCRIBED BY THE

JUDGES OF THE COURT OF APPEALS OF MARYLAND

APPEALS FROM COURTS OF LAW

1.

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.

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 thirty days 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 sixty days from the time of the appeal taken, or Writ of Error Allowed.

3.

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.

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 practiced.

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

5.

All appeals allowed from decrees or orders of Courts of Equity shall be taken and entered within thirty days

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 thirty days from the time of the discovery of the fraud or mistake, and not afterwards.

6.

All transcripts of records, on appeals from Courts of Equity, shall be made and transmitted to the Court of Appeals within sixty days 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.

APPEALS FROM THE ORPHANS' COURTS

7.

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

8.

All appeals allowed from the judgments or orders of the Commissioner of the Land Office, shall be taken within thirty days 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

9.

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.

10.

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 rules of this Court, 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 during which it is received, but all transcripts received on or after ~~May~~ April first in any year shall be entered by the Clerk as of the term commencing on the first Monday in October in such year.

11.

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. For good cause shown the Court of Appeals, or if the Court is not in session the Chief Judge thereof, may extend the time for transmitting the transcript by order made before the expiration of the time.

12.

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.

13.

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.

14.

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.

15.

The appeal allowed by Sec. 108 of Article 23 of the Code of Public General Laws, shall be taken within thirty days from the date of the judgment or determina-

tion 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.

16.

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.

17.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him. Unless requested by the court, it is not necessary to state the grounds for objections to evidence except in circumstances in which it would heretofore have been necessary to call attention to special grounds for objection. Objections, other than objections to evidence, heretofore required to be made by exceptions in writing shall be made in writing.

18.

Promptly after an appeal is taken, the appellant shall serve upon the appellee and file in the lower Court a designation of the portions of the record, proceedings and evidence to be contained in the record on appeal. Within ten days thereafter any other party to the appeal

may serve and file a designation of additional portions of the record, proceedings and evidence to be included. Instead of serving such designations, the parties by written stipulation filed with the clerk of the lower Court may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

It is not necessary for the record on appeal to be approved by the lower Court or judge thereof, but if any difference arises as to whether the record truly discloses what occurred in the lower Court, the difference shall be submitted to and settled by the Court and the record made to conform to the truth.

19.

If there be designated for inclusion any evidence or proceedings at a trial or hearing which was stenographically reported, the appellant shall file with his designation three copies, (including any already on file) of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript the appellant shall file three copies of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. One of the copies so filed by the appellant shall be available for the use of the other parties, one for inclusion in the record.

Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part hereof.

20.

In designating the portions of the record, proceedings and evidence to be contained in the record on appeal, all matter not essential to the decision of the questions presented by the appeal shall be omitted. The clerk shall state at whose instance any matter which is claimed, or appears, to be irrelevant is inserted, so that costs may be withheld or imposed as the circumstances of the case may require.

21.

Whenever deeds, records or other documentary evidence are used in any 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 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.

22.

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 lower Court, 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 lower Court shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the judgment or decree from which the appeal is taken, and, together with such judgment or decree, shall be copied and certified to the Appellate Court as the record on appeal.

23.

All appeals shall be brought into this Court by transcripts of the records of the Courts below, which shall be made up as directed by the Rules of this Court. The transcript shall always include, whether or not designated by the parties, copies of the following: The material pleadings without unnecessary duplication; the verdict, if any; any opinion or charge of the Court or statement of grounds for its decision; the judgment, decree or order or part thereof appealed from; and the designations or stipulations of the parties as to matter to be included in the record.

The Clerk shall collect in advance from the appellant a fee of ten dollars ($10.00) for filing the record and all duties incident thereto.

APPEALS IN CRIMINAL CASES

24.

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.

SEC. 2. In cases in which no bills of exceptions would formerly have been necessary, 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; in all other cases the transcript shall be transmitted within fifty days. The transcript shall be made up as in civil cases, but the accused shall not be required to file more than two copies of the reporter's transcript, one of which shall be for inclusion in the record.

SEC. 3. 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

25.

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.

TERMS

26.

The Court shall hold one term annually, beginning on the first Monday in October in each year and continuing until the beginning of the next term.

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, including all cases not disposed of at the preceding term.

SEC. 2. Before the beginning of each term and on the first Monday in every second month after the beginning of the term, the Clerk 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 or postponed 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 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 any case until the record therein shall have been actually filed in his office.

28.

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 AND POSTPONEMENT

30.

No cases will be postponed or continued for more than four months without the mutual consent of the parties in open Court, or their written order to that effect, and if any case be so postponed or continued, it must be argued or submitted within six months after the transmission of the record, unless by leave of Court it be further postponed or continued. 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 six months after it is so dropped the appeal shall be dismissed, unless otherwise ordered by the Court, before the expiration of six months.

The Clerk will charge a fee of five dollars ($5.00) for the continuance of any case.

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 record, 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 defend-

ant 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 adverse 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.

Unless ordered by this Court, it shall not be necessary to print the record on appeal, except that the appellant shall print as a part of the appendix to his brief the judgment, decree or order appealed from, together with any opinion or charge of the Court. If the record is printed, without order of Court, the cost of printing shall not be taxed as costs in the case except in cases where for special cause shown the Court shall otherwise order.

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

38.

In all cases to be argued, the counsel shall furnish the Clerk with printed briefs, which shall be printed with clear readable type and on good paper, the pages to be 6⅛" x 9¼" when delivered.

39.

SEC. 1. The brief of the appellant shall contain:

(a) An index and table of citations with cases alphabetically arranged.

(b) A brief statement of the case together with a succinct statement of the questions involved, separately numbered.

(c) A clear concise statement of the facts with reference to the pages of the typewritten or printed transcript where there is any possibility that the other side may question the statement. Where portions of the testimony are printed in an appendix to the brief, the reference may be to such printed testimony.

(d) Argument in support of the position of the appellant.

(e) An appendix which, in addition to what is required by Rule 36, shall contain such parts of the record as he desires the Court to read. Stars or other appropriate means should be used to indicate omissions in the testimony of witnesses, reference to the pages of the transcript should be made and the names of the witnesses should be indexed.

SEC. 2. The appellant, within ten days after the filing of the transcript of the record in this Court, shall furnish the appellee or his counsel with a statement of the parts of the record he proposes to print with his brief.

SEC. 3. The brief of the appellee shall contain:

(a) An index and table of citations with cases alphabetically arranged.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with references to pages of the typewritten or printed testimony.

(d) Argument in support of the position of the appellee.

(e) An appendix containing such parts of the record as he desires the Court to read, and as have not been printed in the brief of appellant. Stars or other appropriate means should be used to indicate omissions in the testimony of witnesses, reference to pages of the transcript should be made and the names of the witnesses should be indexed.

SEC. 4. The appellant may file a reply brief and may set forth in an appendix thereto such parts of the record as he may wish the Court to read in view of the parts printed by the appellee.

SEC. 5. Briefs shall not exceed fifty printed pages in length except by special permission of the Court; but this limitation shall not apply to the appendices hereinbefore provided for or to the index and table of cases.

SEC. 6. Briefs shall be printed and the cost of printing them, with the appendices hereinbefore provided for, shall be taxed as costs in the case; when, in the opinion of the Court, unnecessary matter has been printed, it may withhold or divide costs as justice may require. There shall be no taxation of costs for briefs of amici curiae, or replies thereto, unless ordered by the Court.

FILING OF BRIEFS

40.

SEC. 1. Within thirty days after the filing of the transcript of the record in this Court, counsel for the appellant shall file with the Clerk forty copies of a printed brief conforming to the requirements of Rule 39; within twenty days after the filing of the appellant's brief counsel for the appellee shall file forty copies of his printed brief conforming to said requirements. A reply brief may be filed by the appellant provided forty printed copies thereof are filed at least three days before the day the case is called for argument. One copy of all briefs filed shall forthwith be furnished by the

Clerk to each of the counsel of record on the opposite side. Unless advanced by order of this Court, no case will be called for argument until ten days after the appellant's brief and the appellee's brief have each been filed or according to this rule should have been filed.

SEC. 2. When, according to this rule, an appellant is in default, the case may be dismissed on motion or by the Court of its own motion; and when an appellee is in default, he will not be heard except on consent of his adversary, or by request of the Court.

SEC. 3. If a case is advanced by order of this Court, such order shall fix the times within which the briefs of the respective parties shall be filed or exchanged.

SEC. 4. The time for filing a brief may be extended, by stipulation of counsel filed in the Clerk's office if such extension will not delay the argument of the case, but in any event the appellant's brief and the appellee's brief shall be filed at least ten days and the reply brief, if any, at least three days before the case is called for argument.

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

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.

For filing a motion or petition for Re-argument and all duties incident thereto, the Clerk shall charge a fee of five dollars ($5.00).

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, 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.

HABEAS CORPUS APPEALS

49.

Applications for leave to prosecute an appeal under section 3C of Article 42, of the Code as enacted by Chapter 625 of the Acts of 1947, may be filed within ten days after the passage of the order in question, either with the clerk of this court or with the clerk of the lower court to be by the latter transmitted to this court. A brief in support of the application may be filed as provided in Rule 40 in respect of other cases. The applicant may, at his option, omit filing a brief and in lieu thereof rely on the statement in his application of the reasons why the order should be reversed.

MOTION TO DISMISS APPEAL

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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.

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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.

GENERAL EQUITY RULES

EQUITY COURTS ALWAYS OPEN

DUTIES OF THE CLERK

1.

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.

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.

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.

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.

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.

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.

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 other than the writ of subpoena, 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.

The bill or petition, or a memorandum or directions to the Clerk accompanying the same, 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. If any of said defendants are known to be infants under age, or under any other disability, such facts shall be stated in the bill or petition, 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 a prayer for process.

9.

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

In all divorce and annulment of marriage proceedings where the defendant has not been served with subpoena, and has not appeared voluntarily, the complainant shall be required to make reasonable efforts to ascertain the actual whereabouts of the defendant, and, by whatever means that may be available—that is to say, by registered mail, by wire, by telephone, or by personal interview—to bring to the knowledge of the defendant the fact that a suit is pending against him or her, the object and purpose of which is to obtain a divorce, or to have the marriage annulled, as the case may be. In such cases, therefore, where only notice by publication has been given to the defendant, a final decree for the complainant shall not pass until a sworn statement by the complainant or his or her solicitor shall be filed which shall give a circumstantial account of the efforts of the complainant to locate the absent defendant and to warn him or her of the pendency of the suit, or until sworn evidence before the examiner shall disclose a bona fide effort by the complainant to discharge his or her obligation to notify the defendant. And the failure of the complainant to make such reasonable effort in good faith, and to offer proof thereof, shall be ground for the postponement or denial of the entry of decree pro confesso or of final relief.

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 at any time before final decree shall be entitled to other subpoenas against such defendant.

13.

The service of process to require appearance shall be by reading, and delivering a copy of, the summons or

as the same may be changed or modified by these rules, or by statute.

11.

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 and without the necessity of any prayer therefor in the bill, upon the application of the plaintiff, which subpoena 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 at any time before final decree shall be entitled to other subpoenas against such defendant.

13.

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.

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.

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.

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.

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.

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 an 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.

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.

Either plaintiff or defendant shall be at liberty to decline answering an interrogatory, or part of an interroga-

tory 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.

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 necessasry 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 orig-

inal 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.

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.

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.

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.

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.

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.

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 testimony 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 299 of Article 16 of the Code of Public General Laws.

36.

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.

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.

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.

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.

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.

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.

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 290 and 291 of Article 16 of the Code of Public General Laws.

44.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 audi-

tor, 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.

All parties accounting before the auditors 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 30th day of April, A. D. 1941, 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 Circuit 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.

GENERAL RULES OF PRACTICE AND PROCEDURE

EFFECTIVE SEPTEMBER 1, 1941.

CITATION OF RULES

To facilitate future additions without renumbering, the Rules have been grouped and numbered by topics, such as Depositions, Discovery, and Trials. They may be conveniently cited by reference to the topic and the Rule number,—as, for example, "Deposition Rule 3", "Discovery Rule 5".

GENERAL RULES OF PRACTICE AND PROCEDURE

PART ONE.

GENERAL RULE.

Except as modified or superseded by the following rules, all existing general and local statutes and rules of the Court of Appeals regulating practice and procedure in civil cases at law and in equity in courts of record in this State are hereby adopted as general rules of the Court of Appeals, pursuant to its powers under Section 35 of Article 26 of the Annotated Code of Maryland (1939 Edition). As used in this rule the terms "practice and procedure" shall include all matters and subjects on which the Court of Appeals is authorized to prescribe general rules by Section 35 of said Article 26.

PART TWO.

RULES APPLICABLE TO LAW AND EQUITY.

I. DEPOSITIONS

Rule 1. Depositions Pending Proceedings.

At any time after jurisdiction has been obtained over any defendant or over property which is the subject of the proceeding, any party to any proceeding may, without leave of court, cause the testimony of any person, whether a party or not, to be taken by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding or for both purposes. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. The taking and use of such depositions shall be governed by Rules 3 to 12, inclusive.

Rule 2. Depositions Before Proceedings.

(a) *Right to Take.* A person who desires to perpetuate his own testimony or that of any other person regarding any matter in proving which he may apprehend himself to be interested may have his own or such person's deposition taken in this State in accordance with these rules. The notice required by Rule 5 shall be given to each person against whom such deposition is expected to be used. In applying the rules to such depositions the persons notified shall be deemed "parties" and references to the "court in which the proceeding is pending" shall be deemed to refer to any court of law or equity in this State within whose jurisdiction the depositions are to be taken.

(b) *Minors and Incompetents.* Where any person against whom such deposition is to be used is a minor or incompetent, notice may be given to his attorney or guardian or committee, or if he has none, any court of law or equity within whose jurisdiction the deposition is to be taken may appoint a guardian or attorney for that purpose upon motion by the person taking the deposition.

(c) *Non-residents.* When any person against whom such deposition is intended to be used is absent from the State and has no agent, attorney or guardian within the State, any court of law or equity within whose jurisdiction the deposition is to be taken may, upon motion by the person taking the deposition, authorize notice to such person by publication, registered mail or otherwise and may appoint an attorney to represent him at the examination.

Rule 3. Persons Before Whom Taken.

(a) *Within This State.* Within this State, depositions shall be taken before any standing commissioner or equity examiner or before any notary public of this State.

(b) *In Other States.* Within any other state of the United States or within a territory, district, or possession of the United States, depositions shall be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *In Foreign Countries.* In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)".

(d) *Disqualification for Interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding, unless the parties agree thereto.

Rule 4. Stipulations as to Taking of Depositions.

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Rule 5. Notice to Take Depositions.

(a) *Upon Oral Examination.* A party desiring to take the deposition of any person upon oral examination shall give at least five days' notice in writing to every other

party to the proceedings. The notice shall state the time and place for taking the deposition, the name or descriptive title of the officer before whom the deposition is to be taken, and the name and address of each person to be examined, or, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

(b) *Upon Written Interrogatories.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

Rule 6. Orders to Protect Parties and Deponents.

(a) *Power.* After notice is served for taking a deposition by oral examination, or upon written interrogatories, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the proceeding is pending may make an order (1) that the deposition shall not be taken, or (2) that it may be taken only at some designated place other than that stated in the notice, or before some other designated officer, or (3) that it may be taken only on written interrogatories, or only by oral examination, as the case may be, or (4) that certain matters shall not be inquired into, or (5) that the scope of the exam-

ination shall be limited to certain matters, or (6) that the examination shall be held with no one present except the parties to the proceeding and their officers or counsel, or (7) that after being sealed the deposition shall be opened only by order of the court, or (8) that secret processes, developments or research need not be disclosed, or (9) that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from hardship or oppression.

(b) *Limitations.* The policy of these rules is to require full disclosure as specified in Discovery Rule 3 and the powers conferred by section (a) of this rule shall be used only to prevent genuine oppression or abuse.

(c) *Expenses.* If a motion under this rule is denied and if the court finds that the motion was made without substantial justification, the court shall require the moving party or witness or the attorney advising the motion or both of them to pay to the party taking the deposition the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees. If, upon a motion under this rule, the court orders that the deposition shall not be taken and if it finds that the purpose in taking the deposition was to harass or oppress the witness or party, the court shall require the party attempting to take the deposition or the attorney advising such taking or both of them to pay to the moving party or witness the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

Rule 7. Subpoenas; Place of Examination.

(a) *Subpoena.* Upon proof of service of a notice to take a deposition as provided in Rule 5, the clerk of any court of this State having jurisdiction over the place

where the deposition is to be taken shall issue subpoenas for the persons named or described in the notice. A subpoena commanding the production of documentary evidence on the taking of a deposition shall not be issued without an order of the court.

(b) *Place of Examination.* A resident of this State may be required to attend an examination for deposition only in the county wherein he resides or is employed or transacts his business in person. A non-resident may be required to attend in this State only in the county wherein he is served with a subpoena or within forty (40) miles from the place of service or at such other place as is fixed by an order of the court.

(c) *Out of State.* Where the examination is held outside of this State, witnesses shall be compelled to attend and testify in accordance with the law of the place where the examination is held.

Rule 8. Conduct of Examination.

(a) *Upon Oral Examination.* When the deposition is taken upon oral examination, examination and cross-examination of the deponents may proceed as permitted at the trial. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer who shall propound them to the witness and record the answers verbatim.

(b) *Upon Written Interrogatories.* When the deposition is to be taken upon written interrogatories, a copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly in the manner provided by these rules to take the testimony of the witness in response to the interrogatories and to prepare, certify and file or mail the deposi-

tion, attaching thereto the copy of the notice and the interrogatories received by him.

(c) *Record of Examination.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed unless (1) the parties agree otherwise, or (2) the court in which the proceeding is pending, upon motion and for good cause shown, orders otherwise to save expense, or to prevent hardship or injustice. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(d) *Refusal to Answer.* If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to any court of law or equity within whose jurisdiction the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any written interrogatory the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification, the court shall require the refusing party or other deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without sub-

stantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

Rule 9. Signing and Certification of Deposition.

(a) *Signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 10 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(b) *Certification, Filing and Copies.*

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the proceeding is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

Rule 10. Effect of Errors and Irregularities in Depositions.

(a) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to Taking of Deposition.*

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 5 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other inter-

rogatories and within 3 days after service of the last interrogatories authorized.

(d) *As to Completion and Return of Deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 11. Use of Depositions.

(a) *When to be Used.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had due notice thereof, if the court finds: (i) that the witness is dead; or (ii) that the witness is out of the jurisdiction, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the

attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts in accordance with this rule.

Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any court of this State or of any other state or of the United States has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to Admissibility.* Subject to the provisions of Rule 10, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of Taking or Using Depositions.* A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than as permitted by paragraphs (1) and (2) of section (a) of this rule makes the deponent the witness of the party introducing the deposition. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Rule 12. Penalties.

(a) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by any court of law or equity within whose jurisdiction the deposition is being taken, the refusal may be considered a contempt of that court.

(b) *Other Orders.* If any party or any officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition after being served with the proper notice or refuses to answer any designated questions after an order of court to do so, the court in which the proceeding is pending may make any of the orders authorized by Discovery Rule 7.

(c) *Failure to Attend.* If the party giving the notice of the taking of a deposition on oral examination fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(d) *Failure to Subpoena Witness.* If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

Rule 13. Application and Effect on Existing Laws.

Rules 1 through 12 shall apply in all civil actions both in law and equity in all courts of record throughout the State. These Rules shall be the exclusive method for

taking depositions in all cases to which they apply, and to that extent supersede the following statutes and rules:

(1) Sections 21 through 36 of Article 35 of the 1939 Code and all rules of court pursuant thereto, except the provisions of Section 24 as to appointment of standing commissioners, and Sections 25, 33 and 36;

(2) Section 44 of Article 17 of the 1939 Code;

(3) General Equity Rules 34 through 41, and 44 (Article 16, Sections 281 through 289 of the 1939 Code) and Sections 294 through 299 of Article 16 of the 1939 Code, and all rules of court pursuant thereto, insofar as such sections and rules apply to depositions *de bene esse* or for use in trials where testimony is taken in open court pursuant to Sections 290 and 291 of Article 16 of the 1939 Code. But Rules 1 through 12 shall not affect hearings before an examiner in equity pursuant to Rules 34 through 42 of the General Equity Rules (Article 16, Sections 281 through 288, and 293, 1939 Code) in substitution for taking testimony in open court, or hearings before auditors or masters.

II. DISCOVERY

Rule 1. Discovery by Deposition.

Depositions may be taken for discovery in accordance with Deposition Rules 1 and 3 to 12, inclusive, and Discovery Rule 3.

Rule 2. Interrogatories to Parties.

(a) *Delivery.* Any party to any proceeding may at any time serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf. No party may, without leave of court, serve upon the same party more than one set

of interrogatories or more than thirty interrogatories (including interrogatories subsidiary or incidental to, or dependent upon other interrogatories, however grouped, combined or arranged) to be answered by him.

(b) *Answers.* Within fifteen days after the delivery of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time, the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories. Each interrogatory shall be answered separately and fully in writing under oath or the grounds for refusal to answer shall be fully stated under oath. The answers shall be signed by the person making them.

(c) *Exceptions.* Within ten days after the delivery of the answers, the party submitting the interrogatories may file exceptions to the sufficiency of any answer or to any refusal to answer, which shall be heard as soon as practicable. If an exception is sustained, the court shall order an answer or further answer within such time as it may prescribe and, if the court finds that the refusal or insufficient answer was without substantial justification, the court shall require the party or his attorney or both of them to pay to the party submitting the interrogatories the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the exception is denied and if the court finds that it was made without substantial justification, the court shall require the party submitting the interrogatories or his attorney or both of them to pay to the other party the amount of the reasonable expenses incurred in opposing the exceptions, including reasonable attorney's fees.

(d) *Default.* If, after proper service of interrogatories upon a party, he fails to serve answers to them within the time allowed, the court on motion and notice

may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

(e) *Use of Answers.* At the trial or at any interlocutory proceeding, all or any part of the answers of a party to interrogatories, so far as admissible under the rules of evidence, may be used as evidence against such party by the party submitting the interrogatories. If only a part of the party's answers is offered in evidence, he may require the introduction of all of the answers which are relevant to the part introduced.

Rule 3. Scope of Examination and Interrogatories.

Unless otherwise ordered by the court, a deponent may be examined pursuant to Rule 1, or interrogatories may be submitted to a party pursuant to Rule 2, regarding any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding (1) whether relating to the claim or defense of the party examining or submitting interrogatories or to the claim or defense of any other party and (2) including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and (3) including any information of the witness or party, however obtained, as to the identity and location of persons having knowledge of relevant facts and (4) whether or not any of such matters is already known to or otherwise obtainable by the party examining or submitting interrogatories.

Rule 4. Discovery of Documents and Property.

Upon motion of any party showing good cause therefor and upon notice to all other parties, the court may, at any time in any proceeding,

(1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of

the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which may constitute or contain evidence material to any matter involved in the proceeding and which are in his possession, custody, or control; or

(2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon; or

(3) order any samples to be taken, or any observations to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence as to any matter involved in the proceeding.

The order shall specify the time, place, and manner of making the inspection, observations or experiments and of taking the copies and photographs or samples and may prescribe such terms and conditions as are just.

Rule 5. Mental and Physical Examinations.

Whenever the mental or physical condition of a party is material to any matter involved in any proceeding, the court may, upon motion by any party and notice to all other parties, for good cause shown, order such party to submit to a mental or physical examination by a physician or physicians. The order (1) shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made and (2) may regulate the filing of a report of findings and conclusions and the testimony at the trial by the examining physician or physicians, the payment of the expenses of the examination and any other relevant matters.

Rule 6. Admission of Facts and of Genuineness of Documents.

(a) *Request.* A party to any proceeding may at any time serve upon any other party a written request to admit (1) the genuineness of any relevant documents described in and exhibited with the request or (2) the truth of any relevant matters of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

(b) *Admission.* Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

(c) *Effect of Admission.* Any actual or implied admission made by a party pursuant to such request is for the purpose of the pending proceeding only and it neither constitutes an admission by him for any other purpose nor may it be used against him in any other proceeding.

(d) *Expenses on Refusal to Admit.* If a party, after being served with a request to admit any matters, serves a sworn statement refusing such admission and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, the court, upon application, may order the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees, unless the court finds that there were good reasons for the refusal or that the admission sought were

of no substantial importance. Objections to a request to admit or to a refusal to admit shall be heard only on the application to assess expenses pursuant to this section (d).

(e) *Withdrawal.* The court may, to prevent injustice, allow the party making any such admission to withdraw it or relieve a party from any implied admission, upon such terms as may be just.

Rule 7. Failure to Comply With Orders.

If any party or an officer or managing agent of a party refuses to obey an order requiring him to answer designated questions, or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, or to permit entry upon land or other property, or to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(1) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental conditions;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(4) In lieu of any of the foregoing orders or in addition thereto, an order punishing any party or agent of a party for contempt, for disobeying any of such orders except an order to submit to a physical or mental examination.

Rule 8. Application and Effect on Existing Laws.

Rules 1 through 7 shall apply to all civil actions in law and equity in all courts of record throughout the State. These Rules supersede the following statutes and rules:

(1) General Equity Rules 25 and 26 (Article 16, Sections 186 and 187 of the Code);

(2) Sections 27 and 28 of Article 16 of the Code; and

(3) Sections 104 and 106 of Article 75 of the Code.

PART THREE.

RULES APPLICABLE TO LAW ONLY.

I. PLEADING

Rule 1. Pleas Amounting to General Issue.

It shall be no objection to any special plea that it amounts to the general issue plea.

II. JUDGMENTS BY CONFESSION

Rule 1. Judgment by Confession.

(a) *Entry.* Judgment by confession may be entered by the clerk upon the filing by the plaintiff of a declaration in the usual form, accompanied by one or more written instruments authorizing the confession of judgment and entitling the plaintiff to a claim for liquidated damages and supported by an affidavit made by the plaintiff or some one on his behalf stating the amount due thereunder, and indicating the post office address

(including street address if needed to effect mail delivery) of the defendant.

(b) *Personal Summons.* Immediately upon entering any such judgment the clerk shall issue a summons for the defendant notifying him of the entry of the judgment and requiring him to appear in the cause wherein it is entered within thirty days after the service upon him of the summons and show cause, if any he has, why the judgment should be vacated, opened, or modified. Any application made by the defendant with respect to the judgment within thirty days from the service of the summons shall be promptly heard by the court, and such action taken as the court may deem just. If the judgment is opened or set aside the case shall stand for trial in accordance with the rules of the court. If no cause is shown in pursuance of the summons, the judgment shall be deemed to be final, to the same extent as a judgment entered after trial, but may be set aside or modified on the ground of fraud or mistake.

(c) *Non-resident Defendants.* If the affidavit filed in the proceedings shows that the defendant is not a resident of Maryland, the clerk shall send by registered mail to such defendant at his address indicated in the affidavit a summons similar to that prescribed in section (b) and it shall be the duty of such defendant to respond to such summons within thirty days after the receipt thereof; or the plaintiff may, if he so elects, provide for the personal service of the summons upon the defendant, wherever he may be found, and file in the proceedings an affidavit showing the time and place of such service. Such personal service shall have the same effect as if the defendant had been summoned in the manner prescribed in section (b).

(d) *Address Unknown.* Where the affidavit filed in the proceedings indicates that the address of the de-

fendant is unknown, no judgment shall be entered except upon order of court, and the judge shall provide for notice to the defendant through order of publication, posting of a copy of the summons at the Court House door, or otherwise.

(e) *Extension of Time.* The court may, for good cause shown, extend the time for responding to any summons or notice issued in pursuance of this rule.

(f) *Other Cases.* Except as authorized by this rule, judgments by confession shall be entered only upon order of court, after such notice and upon such terms as the court may direct.

Rule 2. Effect on Existing Laws.

Rule 1 supersedes Section 6 of Article 26 of the 1939 Code and all local court rules inconsistent with the Rule.

III. TRIALS

Rule 1. Voluntary Dismissal.

(a) *By parties.* Without an order of court a party may dismiss his claim, counter-claim or set-off as to any other party only:

(1) by filing a notice of dismissal at any time before the introduction of any evidence at the trial or hearing; or

(2) by filing a stipulation of dismissal signed by all parties who have appeared generally in the action.

(b) *By Court Order.* Except as provided in (a), such voluntary dismissal shall be allowed only upon order of court and upon such terms and conditions as the court deems proper. If any party has pleaded a counter-claim or set-off before service upon him of an opponent's motion for voluntary dismissal, the dismissal shall not

be allowed over such party's objection unless the counter-claim or set-off can remain pending for independent adjudication by the court.

(c) *Effect.* Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or of the United States an action based on or including the same claim.

(d) *Costs.* Unless otherwise provided by stipulation or order of court, the party dismissing is responsible for all costs as to the action or the part dismissed. If a party, who has once dismissed a claim in any court, asserts substantially the same claim against the same defendant in another action, the court may make such order for the payment of costs in connection with the previous dismissal as it may deem proper and may stay the proceedings in the action until the party has complied with the order.

(e) *Application.* "Dismiss" or "dismissal" includes submission to a voluntary judgment of *non-pros* or nonsuit or other voluntary discontinuance. This rule governs proceedings at law only.

Rule 2. Consolidation.

When actions involving a common question of law or fact or a common subject matter are pending before any court of law, or before several of the courts of law of Baltimore City, such court or any of such courts in Baltimore City may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 3. Juries of Less Than Twelve—Majority Verdict.

The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 4. Directed Verdict.

In any proceeding tried by jury any party may move, at the close of the evidence offered by an opponent or at the close of all the evidence, for a directed verdict in his favor on any or all of the issues. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted without having reserved the right to do so and to the same extent as if the motion had not been made, but in so doing he withdraws the motion. A motion for a directed verdict shall state the grounds therefor. Instead of granting or denying the motion for a directed verdict the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge of the jury, but for the purpose of appeal such reservation constitutes a denial of the motion, unless judgment is entered for the moving party pursuant to Rule 8. In this rule "motion" includes "prayer" and "move" includes "pray".

Rule 5. Demurrer to Evidence.

In any proceeding at law tried by the court without a jury, any party, without waiving his right to offer evidence in the event the motion is not granted, may move at the close of the evidence offered by an opponent for a dismissal on the ground that upon the facts and the law he has shown no right to relief. Unless the court otherwise specifies, such a dismissal operates as an adjudication upon the merits.

Rule 6. Instructions to the Jury.

(a) *Prayers.* At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file with the Court written prayers that the Court instruct the jury on the law as set forth in the prayers, and shall furnish to all adverse parties copies of such prayers.

(b) *Instructions.* In its instructions to the jury, which may be given either orally or in writing or both, the Court, in its discretion,

(1) may instruct the jury upon the law of the case, either by granting requested instructions or by giving instructions of its own on particular issues or on the case as a whole, or by several or all of these methods, but need not grant any requested instruction if the matter is fairly covered by instructions actually given; and

(2) may sum up the evidence, if it instructs the jury that they are to determine for themselves the weight of the evidence and the credit to be given to the witnesses.

An oral charge need not comply with the technical rules as to prayers.

(c) *Objections.* Before the jury retires to consider its verdict, any party may object to any portion of any instruction given or to any omission therefrom or to the failure to give any instruction, stating distinctly the portion or omission or failure to instruct to which he objects and the specific grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(d) *Appeal.* Upon appeal a party, in assigning error in the instructions, shall be restricted to (1) the particular portion of the instructions given or the particular omission therefrom or the particular failure to instruct distinctly objected to before the jury retired and (2) the

specific grounds of objection distinctly stated at that time; and no other errors or assignments of error in the instructions shall be considered by the Court of Appeals.

Rule 7. Special Verdicts.

(a) *Use.* The court in its discretion may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict. Upon the return of the special verdict of the jury, the court shall direct the entry of the appropriate judgment in accordance with this rule.

(b) *Appeal.* Upon appeal error may be assigned as to the submission of issues, or as to any explanation and instructions of the court, or as to any refusal of the court to submit issues upon demand, only in accordance with Rule 6, subsections (c) and (d); but any express or implied findings by the court, and the judgment directed by it may be reviewed as provided in Rule 9, subsection (c).

Rule 8. Judgment N. O. V.

(a) *Motion.* Whenever a motion for a directed verdict made by a party at the close of all the evidence is denied, then (1) within three days after the reception of a verdict, such party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict, or (2) if a verdict was not returned, such party, within three days after the jury has been discharged, may move for a judgment in accordance with his motion for a directed verdict. Whenever the court reserves decision on a motion for a directed verdict and submits the case to the jury, that operates as a motion for judgment under this rule. A motion for a new trial may be joined with a motion for judgment under this rule or a new trial may be prayed for in the alternative. Failure to move for judgment under this rule does not affect a party's right upon appeal to assign as error the denial of his motion for a directed verdict.

(b) *Disposition.* If a verdict was returned, the court may allow the judgment to stand or may re-open the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial. If the motion for judgment is granted, the court shall also rule upon any motion for new trial, but the new trial if granted shall be had only if the judgment so entered is reversed upon appeal.

(c) *Appeal.* Whenever a judgment so entered by the trial court is reversed on appeal, the Court of Appeals (1) shall remand the case for a new trial if the lower court conditionally so ordered or (2) otherwise may order a new trial or enter such judgment upon the original verdict as may be just. Whenever a judgment is

reversed on appeal for refusal of a motion for judgment pursuant to subsection (a), the Court of Appeals may enter judgment as if the requested verdict had been directed or may order a new trial.

Rule 9. Trial by the Court.

(a) *Judgment.* When any proceeding at law is tried upon the facts by the court, the court at or after the trial shall direct such judgment to be entered as it thinks right upon the evidence and the law. The court shall dictate to the court stenographer, or prepare and file, a brief statement of the grounds for its decision and the method of determining any damages awarded. No requests for instructions and no objections or exceptions to the judgment or to the opinion of the court are required for the purpose of review.

(b) *Amendment.* Upon a motion for a new trial the court may open such judgment, revise it or amend it, and in its discretion may take additional testimony and direct the entry of a new judgment.

(c) *Appeal.* When a proceeding has been so tried by the court, an appeal from the judgment, if allowed by law, may be taken according to the practice in equity. Upon appeal the Court of Appeals may review upon both the law and the evidence, but the judgment of the trial court shall not be set aside on the evidence, unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The Court of Appeals may affirm, reverse, modify, or remand, as in appeals from equity.

Rule 10. Partial New Trial.

When it appears to a court of law upon a motion for a new trial that any grounds for a new trial affect only a severable part of the matters in controversy, or only some or one of the parties, the court may grant a new trial as to such part, or as to such party or parties and

either enter final judgment as to the remaining parts or parties, or stay the entry of final judgment until after the new trial.

Rule 11. Effect on Existing Laws.

(a) Rule 1 supersedes all of Section 183 of Article 75 of the 1939 Code except the first clause.

(b) Rules 4 and 5 supersede Section 96 of Article 75 of the 1939 Code.

(c) Rules 6 and 9 supersede Section 10 except the first clause, and Section 11 of Article 5 of the 1939 Code.

ORDERED by the Court of Appeals of Maryland this 1st day of November, 1945, that the foregoing Rules and Regulations Respecting Appeals, General Equity Rules and General Rules of Practice and Procedure, be and the same are hereby adopted, pursuant to Sections 18 and 18a of Article 4 of the Constitution of this State.

OGLE MARBURY, *Chief Judge*
EDWARD S. DELAPLAINE,
STEPHEN R. COLLINS,
C. GUS GRASON,
RIDGELY P. MELVIN,
WILLIAM L. HENDERSON,
CHAS. MARKELL,

Filed: November 1st, 1945

MAURICE OGLE,
Clerk Court of Appeals.

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