REPORT

AND

RECOMMENDATIONS

of the

COMMITTEE ON PRACTICE AND PROCEDURE

to the

COURT OF APPEALS OF MARYLAND

DECEMBER 20, 1940

The Daily Record Co. Print, Baltimore, Md.

REPORT

The appointment of the members of the Committee on Rules of Practice and Procedure authorized by Chapter 719, Acts of 1939, effective June 1, 1939, was announced in "THE DAILY RECORD" of March 1st, 1940. On the same date the Chairman called a meeting of the Committee to be held in Baltimore on March 8th. Twenty-five members attended.

The following excerpts from the Minutes of the meeting of March 8th may be of special interest, viz:

> "The Chairman stated that it was essential for the Committee to have a Secretary. Upon motion, duly made and seconded and unanimously carried, it was:
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> RESOLVED that one member of this Committee shall be selected as its Secretary to perform such duties as are usual and customary in such cases. He shall likewise serve as Secretary of the Executive Committee. In his absence the Chairman may appoint a Secretary pro tempore.
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> Mr. G. C. A. Anderson was unanimously elected Secretary of the Committee.
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> It was also RESOLVED, that an Executive Committee of nine be constituted. The Chairman of this Committee shall be *ex officio* Chairman of the Executive Committee. The remaining eight members of the Executive Committee shall consist of one member of this Committee from each of the eight Judicial Circuits of the State, who shall in each case, and from time to time be appointed by the Chairman of this Committee.
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> The Executive Committee shall carry on the work of this Committee in the intervals between the meetings of this Committee, and shall, from time to time, perform such duties as may be committed to it by this Committee."
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> "It was resolved That each member of this Committee be requested to deliver to the Secretary a written memorandum setting forth what parts of the Maryland system of Pleading and Practice are,

in his opinion, inadequate and should be changed; and that the Committee be authorized to ascertain in other ways as it elects the sense of the Bar on the subject.

Mr. Robert H. Archer suggested that the Committee obtain the Rules of the Court of each Circuit. The Secretary was directed to obtain such Rules."

On March 12th, 1940, the Chairman announced the appointment of the following as members of the Executive Committee:

George H. Myers, Princess Anne,
G. Elbert Marshall, Easton,
James Clark, Ellicott City,
John B. Gray, Jr., Prince Frederick,
Judge Hammond Urner, Frederick,
Omer T. Kaylor, Hagerstown,
Arthur W. Machen, Baltimore.

By direction of the Committee the Chairman on March 11th, 1940, sent out letters to all members of the Maryland State Bar Association and to many non-members of the Association (or to about 800 Maryland lawyers in all) which read as follows:

"The Committee appointed by the Court of Appeals, pursuant to Chapter 719, Acts of 1939, to aid that Court in the performance of the powers conferred upon it by said Act met and organized on March 8th.

The Committee desires all the information, light and advice it can get, especially from members of the Maryland Bar, on this important subject. To that end the Committee will be grateful if at your convenience you will send us your opinion of our present system of practice and procedure in civil actions in equity and at law; its faults and shortcomings; whether you believe a united system of practice and procedure in law and equity, if lawful, is desirable or not; whether you think our existing system should be revised as and where experience shows it may profitably be improved; or should you think it ought to be abandoned what existing sys-

tem you would suggest as forming the best model and basis for the construction of a substitute.

We realize the above inquiry imposes a burden upon you, but in a matter of such intimate interest to the profession and the public we feel sure of your thoughtful cooperation."

In addition to the 800 letters mentioned, our Reporter, Mr. Robert R. Bowie, our Secretary and our Chairman have been in correspondence with many persons who might aid the work; so that the total letters passing from and to your Committee runs into the thousands. That part of the secretarial work was cared for without cost to the State.

The letter heretofore quoted produced about 160 responses from individuals in addition to sundry group recommendations. The responses quite naturally covered a wide range of opinion and merit. All manifested a lively interest in the question; and many letters indicated sincere and profound study of the subject and were full of valuable recommendations and suggestions. The replies varied in length from precatory appeals to "do nothing," and affirmative requests that we "adopt the Federal Rules" or "adopt the English system", to elaborate papers prepared with great care and ability.

The preponderant trend unquestionably was toward a conservative policy, and in particular against any merger of Law and Equity.

Your Committee is indeed indebted to those serious and interested members of the Maryland Bar who generously gave so much time and effort to put us in possession of not a few scholarly and practical suggestions.

On April 1st, 1940, your Honorable Court appointed Mr. Robert Richardson Bowie, of the Baltimore Bar, Reporter of the Committee.

At a meeting of the Executive Committee held on the 24th of June, 1940, it was resolved unanimously:

> "That it is the sense of this Committee that there be no merger of law and equity and that the Reporter to this Committee be excused from studies of this character."

Mr. Bowie, who was present at that meeting, was instructed to make a study and report among others upon the following questions and suggestions:

> Authorize the Court to supersede and supplement granted instructions by oral instructions of the Court.
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> A consolidation of cases.
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> The enlargement of the right of set-off.
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> Judgments *non obstante verdicto.*
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> Special verdicts.
>
> A uniform speedy judgment act throughout the State.
>
> A uniform confessed judgment act throughout the State.

Notwithstanding the prompt start your Committee made, and in spite of Mr. Bowie's diligence and ability it has been quite impossible within the time this report must be made for your Committee, or for Mr. Bowie, to study and report upon all the matters touching practice and procedure which merit thought and perhaps action. Instead of the 8 or 9 months afforded the Committee, as a matter of fact years of constant study and work are necessary to cover the whole field with credit; and we realize that if this Report is to be of service to the Court it must be delivered by December 31st, 1940.

The best that could be done under the circumstances was to prepare and submit after so brief a time for preparation this report which covers the field but partially; and treats selected subjects deemed to be the most urgent.

If your Committee can be of a further service to the Court and the community it will be a pleasure, should the Court or the General Assembly so desire, to continue our unpaid efforts for such future period as may be necessary.

The matter of practice and procedure is not static. Doubtless it will be helpful to the profession if some smaller body or board of unpaid members be maintained permanently to study this subject and report its findings and recommendations to the Court at frequent intervals in order that we may keep abreast of the times.

The Chairman asks that he be permitted a personal word: It is this:

> "That it was an enjoyable experience to serve as the nominal head of a group made up of gentlemen not only courteous and considerate but unique in their earnestness and intelligence. Except for one member, who is ill, and one other member whose non-participation is as yet unexplained, all the members of the Committee whenever possible have attended our meetings faithfully. All have aided in many ways, for example: By their independent investigations, by getting their local Bar Associations interested and at work to frame and submit recommendations, and by their candid, helpful and discriminating criticism. They used their brains. Many questions were controversial. Some of our recommendations were adopted by a bare majority after full and able arguments. Yet no inconsiderate or intolerant word fell from members' lips. The frequent association with Mr. Bowie has been stimulating and interesting."

It would be less than just if this Committee should neglect to mention with sincere appreciation the always helpful attitude of Chief Judge Bond, or the scholarly and polished papers prepared at the request of the Chairman by several former Judges and sitting Judges, including Judge T. Scott Offutt, now seriously ill.

In short we have had harmonious constructive cooperation among members of the Committee, notwithstanding the divergence of views fearlessly debated and defended; and we have enjoyed every reasonable assistance from the Bar and the Courts.

The choice of Mr. Bowie for our Reporter was fortunate. Mr. Bowie set about his work at once with vigor, and devoted himself thereto with rare energy and to the virtual exclusion of all other professional engagements and even reasonable recreation. His research, in addition to being continuous, was thorough and painstaking. His printed reports upon the problems treated are models of superior scholarship, and are marked by great good judgment. Throughout Mr. Bowie maintained a splendid intellectual plane.

Mr. Bowie modestly declines to set any fee or valuation upon his services. He insists upon leaving the quantum of his compensation to the Court of Appeals to fix. As yet he has received no pay for the over eight months steady work he has done.

We attach hereto our specific recommendations by way of (1) new rules, and (2) in substitution for and as supplements to existing rules.

For your convenience we also attach copies of Mr. Bowie's several reports.

Respectfully submitted for the Committee on Rules of Practice and Procedure,

SAMUEL K. DENNIS, *Chairman*
G. C. A. ANDERSON, *Secretary*

December 20th, 1940.

RECOMMENDATIONS

The Committee recommends the adoption of the following rules, viz:

PART ONE.

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 examination 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 deposition, 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 substantial 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 seasonal 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 interrogatories 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 representa-

tives 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 at-

tends 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 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 admissions 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.

III. PERMISSIVE JOINDER OF PARTIES, CLAIMS, AND COUNTERCLAIMS.

Rule 1. Application and Definitions.

The succeeding Rules 2 through 6 govern actions at law and suits in equity, respectively, but do not affect the existing distinction between law and equity. In applying these Rules:

(1) In cases at law, "action" means an action at law and "claim" is restricted to a claim cognizable at law (including claims so cognizable by statute, such as Article 75, Sections 134-146 of the 1939 Code); and

(2) In cases in equity, "action" means a suit in equity, "claim" is restricted to a claim cognizable in equity (including claims so cognizable by statutes, such as Article 16, Sections 52 and 241, and Article 66, Sections 25 and 34, of the 1939 Code), and "judgment" means a decree.

Rule 2. Permissive Joinder of Parties and Claims.

(a) *Same Parties.* The plaintiff or joint plaintiffs may join in one action either as independent or as alternate claims as many claims as he or they may have against a defendant or joint defendants.

(b) *Successive Remedies.* Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

(c) *Joinder in the Alternative.* Where the plaintiff is uncertain against which of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative although the claim or right to relief against one may be inconsistent with the claim or right to relief against the other. Where several persons are uncertain as to which of them is entitled to a claim

or to relief, any or all of them may join as plaintiffs in the alternative although the claim or right to relief by one may be inconsistent with the claim or right to relief by the other.

(d) *Multiple Joinder.* Separate claims involving different plaintiffs or defendants or both may be joined in one action whenever any substantial question of law or fact common to all the claims will arise in the action or for any other reason the claims may conveniently be disposed of in the same proceeding. The claims joined may be joint, several or in the alternative as to plaintiffs or defendants or both. Any person may join in the action as a plaintiff who demands any relief on any of the claims joined, and he need not be interested in the other claims or in obtaining all the relief demanded. Any person may be joined as a defendant against whom any relief is demanded on any claim, and he need not be interested in defending against the other claims or all the relief demanded.

(e) *Judgment.* Judgment may be given for one or more of the plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

(f) *Separation.* The court may make such orders as will prevent a party from being embarrassed, delayed or put to expense by the inclusion of a party against whom he has asserted no claims and who asserts no claim against him; and may order separate trials or may make other orders to prevent prejudice, delay or unnecessary expense.

(g) *Application.* This rule shall apply to counterclaims as if the party or parties asserting them had brought an independent action; and shall apply in like manner to cross-claims and third-party claims if the requirements of Rules 3 and 4, respectively, are also satisfied.

Rule 3. Counter-claims and Cross-claims.

(a) *Counter-claims.* In any action any party, against whom a claim, cross-claim or third-party claim has been asserted, may plead as a counter-claim any claim by the pleader against any opposing party. Such claim may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party, and need not diminish or defeat the recovery sought by the opposing party. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counter-claim by supplemental pleading.

(b) *Cross-Claim Against Co-Party.* A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counter-claim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(c) *Additional Parties May Be Brought In.* When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counter-claim or cross-claim, the court shall order them to be brought in as defendants if jurisdiction over them can be obtained.

Rule 4. Bringing in Third-party.

(a) *By Defendant.* On notice to the plaintiff, a defendant may move at any time for leave as a third-party plaintiff to serve a summons and pleading upon a person not a party to the action who is or may be liable to him or to the plaintiff for all or part of the claim asserted by the plaintiff. If the court in its discretion grants the motion and the summons and pleadings are served, the person so served, hereinafter called the third-party de-

fendant, shall make his defenses as provided for defendants and his counter-claims and cross-claims against the plaintiff, the third-party plaintiff, or any other party as provided in Rule 3. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff. The plaintiff may amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(b) *By Plaintiff.* When a counter-claim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

Rule 5. Separate Trials.

The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counter-claim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counter-claims, third-party claims, or issues.

Rule 6. Separate Judgments.

(a) When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counter-claims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim

so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(b) When money damages are awarded on a claim and counter-claim, judgment for the excess of one over the other, with costs of suit, shall be given in favor of the plaintiff or defendant, as the case may be, or if such excess is below the jurisdiction of the court, the finding shall have the same effect given a like verdict under Article 26, Section 18 of the Code.

(c) Judgment may be rendered on a counter-claim or cross-claim even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 7. Effect on Existing Laws.

Rules 1 through 6 supersede the following statutes and rules:

(1) General Equity Rule 30;

(2) Sections 16 and 17 of Article 75 of the 1939 Code;

(3) The second sentence of General Equity Rule 31 (Article 16, Section 204 of the 1939 Code);

(4) The second sentence of General Equity Rule 28 (Article 16, Section 202 of the 1939 Code).

PART TWO.

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 defendant 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, counterclaim, cross-claim, or third party claim 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, cross-claim or third-party claim 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, cross-claim, or third-party claim 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.

PART THREE.

RULES APPLICABLE TO EQUITY ONLY.

The following recommendations suggest amendments to existing General Equity Rules. For convenience new matter to be inserted in the existing Rules is printed in italics and matter to be deleted is enclosed in brackets.

Rule 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.

Rule 8.

The bill or petition, or a memorandum or directions to the clerk accompanying the same, [The prayer for process, or for order of publication,] shall contain the

names of all the defendants named in the introductory part of the bill or petition, and the place of their residence, as far as known. [; and if] *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 [the] *a* prayer for process.

Rule 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.

Rule 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.

PART FOUR.

PROPOSALS NOT ACTED UPON.

The Committee received a large number of proposals for changes in procedure, which could not be studied, considered or acted upon because of the lack of time. Among these proposals were the following, which are included for the information of the Court:

Process.

1. To provide for uniform return days throughout the State.

2. To abolish return days and substitute fixed periods for pleading, running from the time of actual service.

Pleading.

1. To simplify pleadings at law by adopting the pattern of the present equity pleadings.

2. To abolish the common counts.

3. To abolish the general issue plea and require all affirmative defenses to be specially pleaded.

4. To require demurrers to state the grounds for demurrer.

5. To provide uniform rules as to time for pleading and as to the effect of demurrer upon the time for pleading.

6. To provide for law days before trials by jury to permit demurrers and motions to be passed upon in time for pleas to be filed before the trial.

7. To regulate the use of bills of particulars.

8. To revise the rules as to duplicity in pleading.

Pre-Trial Conference.

To provide for a pre-trial conference between court and counsel to eliminate matters not in dispute and simplify the issues.

Speedy Judgment.

1. To provide a uniform state-wide rule as to obtention of speedy judgments.

2. To adopt a procedure allowing summary judgment at any stage of the proceeding.

Trials.

To provide a uniform rule as to when and how jury trials shall be prayed.

Appeals.

1. To shorten the time for appeals from a ruling on demurrers in equity or to postpone such appeal until the case has been determined on its merits.

2. To shorten all times for appeal and for transmitting the record.

3. To reduce the expense of records on appeal by elimination of unnecessary material and reduction of costs.

4. To require briefs to be filed longer before the argument.

Judgments.

To provide a uniform rule as to when judgments by default can be entered and extended.