TENTATIVE DRAFT

MARYLAND RULES
OF
PROCEDURE

PART I

PROPOSED ADDITIONS TO AND AMENDMENTS
of
MARYLAND RULES

PART II

REVISION OF CHAPTER 700
CRIMINAL CAUSES

PROPOSED CHAPTER 900
JUVENILE CAUSES

PART III

PROPOSED ADDITIONS TO CHAPTERS ON SPECIAL PROCEEDINGS

Published by
THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
FEBRUARY, 1960

Preface

This volume is a tentative draft of Rules amendatory or supplemental to the Maryland Rules adopted by the Court of Appeals, and published in September 1958 as the "Red Book of 1958" entitled "Maryland Rules of Procedure (1958 Edition)."

Members of the Bar will recall that the main body of the Maryland Rules, embracing those rules affecting ordinary actions at law or in equity, was adopted by the Court of Appeals effective January 1, 1957. Thereafter the Standing Committee on Rules undertook the codification of rules affecting numerous Special Proceedings in Maryland and, after a tentative draft of the rules then completed had been circulated to members of the Bar, and revisions made after consideration of criticisms and suggestions, those Special Proceedings which were ready were submitted to the Court of Appeals and adopted by the Court. These Special Proceedings were included in Chapters 1100, 1200 and 1300 and published in the "Red Book" of 1958.

Since that time the Rules Committee has been engaged in completing drafts of rules with respect to the remaining Special Proceedings in Maryland. This work has now been tentatively completed and is ready for submission to members of the Bar for their criticisms and suggestions. Like the prior Rules, this draft is primarily a codification of existing rules, procedural statutes and adjective law as determined by the Court of Appeals. There are, however, some instances in which it was thought desirable to make substantial changes in the prior practice in these fields.

The present volume of the Committee's tentative work consists of three parts. Part I is devoted to four changes in the main body of the Maryland Rules effective January 1, 1957, and four changes in the Chapters on Special Proceedings effective January 1, 1959. These changes are thought by the Committee to be desirable either to fill existing blind spots in the Rules already passed, or to clarify Rules concerning which there seems to be some misunderstanding. The Committee has been reluctant to make unnecessary changes in Rules already adopted, because stability of the Rules, once adopted, is highly desirable, and the changes now proposed were made only after the most careful consideration. It is to be expected that experience with the Rules will demonstrate that changes are desirable, but such changes will in the future be held to the minimum.

Part II consists of Chapter 700 (Criminal Causes) and Chapter 900 (Juvenile Causes). These two chapters are part of the main Rules project. Chapter 700, as originally adopted effective January 1, 1957, contained only a repetition of those Rules which the Court had theretofore adopted with respect to criminal causes. The chapter as now submitted includes those rules and others designed to cover all of the procedural law in Maryland with respect to criminal causes at the trial court level. Particular attention is invited to proposed Rule 750 relating to court appointed expert witnesses. Opinion among members of the Committee is divided as to the desirability of this rule, as it doubtless will be among members of the Bar. The decision of the Committee thus far has been only to submit the proposed rule to the Bar for its consideration and suggestions; and the Committee will later determine whether to recommend the rule to the Court of Appeals. Chapter 900 (Juvenile Causes) is now submitted for the first time, and it embraces a series of rules dealing with this important aspect of the equity courts' jurisdiction. It is based largely upon procedural statutes and practices found to be desirable in the various Courts dealing with this subject.

Part III consists of a series of Rules dealing with the remainder of the Special Proceedings.

When the Rules with respect to the various Special Proceedings were under

consideration by the Rules Committee, it was found impractical to assign these rules for study according to any particular order or plan. Indeed, the need for rules on some of the Special Proceedings herewith reported was not uncovered until the work was well along. Then, too, some of the staff members and subcommittees were able to report some of the Special Proceedings for action by the Rules Committee more quickly than were others. It was therefore until now impracticable to arrange those Special Proceedings heretofore reported and adopted by the Court of Appeals in any final and logical order. Attention was called to this situation in the Preface to the "Red Book" published in 1958.

Now that all of the Rules with respect to the Special Proceedings have been completed, it is possible to arrange them in a logical plan and order, so as to increase their availability to members of the Bar. Several plans for arrangement of these Special Proceedings were considered, and the Committee deliberated at considerable length to determine what was thought to be the most logical arrangement and the one best calculated to be convenient to members of the Bar. The plan finally adopted will be found in the Table of Contents of Part III of this volume. It consists in publishing all of the Special Proceedings in one Chapter (1100) and arranging the Special Proceedings in alphabetical order in accordance with the chief word of each title. (For instance, "Divorce, Annulment and Alimony" will be listed under "D" for "Divorce", and "Appeals from Administrative Agencies" will appear under "A" for "Administrative Agencies—Appeal From", as will "Absent Persons", "Adoption", "Arbitration and Award", "Attachment on Judgment—Procedure", and "Attachment on Original Process".) This will enable one seeking a particular Special Proceeding to turn immediately to the part of Chapter 1100 dealing with that subject, without the necessity of running through the Table of Contents or the alphabetical index. Each subject will be assigned a separate subtitle within Chapter 1100, and this subtitle will be designated by either one or two letters of the alphabet. The first 22 subtitles (some letters of the alphabet are omitted to avoid confusion with numbers) will be assigned to an equal number of topics dealing with a particular subject, which will be arranged in strict alphabetical order and each will be assigned an upper case letter from A to Z. The remaining subtitles will be assigned two letters, BA, BB, BC, etc., again containing the Rules relating to a particular topic arranged in alphabetical order. This plan will necessitate a rearrangement of the Special Proceedings contained in Chapters 1100, 1200 and 1300 of the "Red Book" of 1958, and a renumbering of the Rules now contained in those chapters. This will be accomplished by assigning to each of the series of Rules contained in those chapters a subtitle and letter at its appropriate place in the first or second alphabet in the new Chapter 1100. The actual location of the subtitles relating to Rules already adopted will appear from the overall Table of Contents of Part III in the initial pages of this volume. While this will involve the necessity for members of the Bar to familiarize themselves with the new location of the Special Proceedings already covered by Rule, this is thought to provide a minimum of inconvenience because experience has demonstrated that the present arrangement does not result in the optimum of accessibility. In each series of Rules relating to a Special Proceeding there will be a number assigned to each rule within the subtitle, and these will be arranged in accordance with the plan of the general Rules by assigning to each Rule applicable to both law and equity digits 1 to 39, those relating to law only digits from 40 to 69, and those relating to equity only digits from 70 to 99. Each subject embraced in Special Proceedings Rules will, after the adoption of this arrangement by the Court of Appeals, be cited by a letter designating its subtitle and a number indicating the rule, e.g., B3 (Who May Appeal), G47 (Service of Writ—Garnishment), BB72 (Ex parte Injunction), etc. Thus all the rules upon the same subject will be designated by the same letter or pair of letters. For example, the letter B will indicate rules on Appeals from Administrative Agencies; the letter G will indicate rules relating to Attachment on Original Process;

the letters BB will indicate rules on Injunctions and the letters BR will indicate rules on Judicial Sales.

The Committee has sought to use the utmost care in drafting these tentative Rules, but its members have no illusions about the probability of errors, inconsistencies and lack of clarity. It is urged that all members of the Bar review these tentative Rules with great care and communicate their suggestions and comment to the Committee. On Page 7 will be found a list of the Committee Members and Staff, and any of these gentlemen will cheerfully discuss any problems presented by these Rules. Any members of the Bench or Bar who have any suggestions or criticisms with respect to these suggested Rules are requested to outline their comment and forward it to Mr. Frederick W. Invernizzi, the Committee's Reporter, 621 Court House, Baltimore 2, Md. After a reasonable time has been allowed for the receipt of these suggestions, the tentative draft herewith submitted will be reconsidered by the Committee in the light of criticisms and suggestions which have been received, and will thereafter be submitted with the Committee's recommendation to the Court of Appeals for the consideration of that Court.

The Committee on Rules again desires to acknowledge the helpful cooperation of The Michie Company in making possible the printing of this tentative draft and the distribution thereof gratis to the members of the Maryland State Bar Association, the Bar Association of Baltimore City and the Baltimore City Junior Bar Association.

Mr. Frederick W. Invernizzi will have a limited supply of this tentative draft, and if any member of the Bench or Bar of the State does not receive a copy, additional copies will be available as long as the supply lasts and may be obtained from Mr. Invernizzi.

JOHN B. GRAY, JR.
Chairman, Standing Committee on Rules

January, 1960.

Court of Appeals Standing Committee on Rules of Practice and Procedure

---

JOHN B. GRAY, JR., *Chairman*
1952-

WILLIAM H. ADKINS, II
1958-

LEVIN C. BAILEY, *Former Chairman*
1946-1952 (Dec'd.)

E. CLINTON BAMBERGER, JR.
1959-

C. KEATING BOWIE
1954-

FREDERICK W. BRUNE
1946-1954

H. VERNON ENEY
1946-1959

ELI FRANK, JR.
1946-1954

DAVID P. GORDON
1954-

WALTER V. HARRISON
1954-

GEORGE HENDERSON
1958-

PAUL M. HIGINBOTHAM
1946-1954

WILLIAM R. HORNEY
1949-1958

J. OWEN KNOTTS
1946-1949 (Dec'd.)

CHARLES C. MARBURY
1946-

WILLIAM J. MCWILLIAMS
1946-

J. HOWARD MURRAY
1946-1954 (Dec'd.)

PARSONS NEWMAN
1946-

EMORY H. NILES
1946-

J. GILBERT PRENDERGAST
1954-

KENNETH C. PROCTOR
1954-

JOSEPH SHERBOW
1946-1954

D. LINDLY SLOAN
1946-1952

W. CONWELL SMITH
1946-1954 (Dec'd.)

MELVIN J. SYKES
1954-

WILLIAM C. WALSH
1952-1958

FREDERICK W. C. WEBB
1946-1955 (Dec'd. 1956)

JOHN W. T. WEBB
1955-

FREDERICK W. INVERNIZZI, *Reporter*

NEIL TABOR, *Asst. Reporter*

Table of Contents

PART I

Proposed Additions to and Amendments of Maryland Rules

PART II

Chapter 700

Criminal Causes (General Revision)

Chapter 900

Juvenile Causes (New)

PART III

Proposed Additions to Chapters on Special Proceedings

Chapter 1100

Special Proceedings

PART I

Proposed Additions to and Amendments of Maryland Rules

Chapter 500.

Trial.

RULES 501-599

GENERAL

Rule 517. Advisory Jury Verdict Abolished ..... Gen'l.

The practice heretofore existing of transferring issues of fact arising in an action in equity to a court of law for an advisory verdict by a jury is hereby abolished. All such issues shall be determined in the equity court in accordance with the existing equity practice, without a jury.
(Proposed.)

Committee note.—This Rule is intended to end the ancient but seldom-used practice of sending issues from courts of equity to courts of law for advisory jury verdicts. It is the Committee's view that modern equity procedure renders this practice neither useful nor desirable, and that its abolition will eliminate a possible source of considerable delay and expense in equity actions.

The Rule is not intended to restrict transfers of cases from equity to law pursuant to Rule 515 (Transfer of Action from Law to Equity and Vice Versa). It does not apply to sanity hearings, which are governed by the provisions of Rules R70-R80 (Disability, Persons under). Nor does the Rule affect the last sentence of Rule 623 b (Attachment on Judgment) as this sentence provides for a transfer from equity to law for a regular jury trial, within the meaning of Rule 515.

Rule 517 is intended to supersede that portion of Article 16, Section 39 (1957 Code) providing for sending issues to a court of law; Article 31A, Section 9, to the extent that it provides for issues from equity to law for an advisory verdict; and Section 237, Charter and Public Local Laws of Baltimore City (1949) providing for impanelling an advisory jury in the equity court.

Rule 532. Property or Income—Possession, Receipt and Charging Orders ..... Gen'l.

a. *Court Order.*

A court may, subject to the provisions of Rule 1195 (Injunction), at any stage of an action, on motion or of its own accord, pass such order with regard to the possession of property with which the action is concerned or with reference to the receipt of or charging of the income, interest or dividends therefrom for any purpose, on such terms and conditions, as justice may require.

b. *Order—Not Binding Without Notice.*

A person shall not be bound by such order until he shall have received actual notice thereof by personal service or otherwise.

c. *Motion to Modify or Discharge.*

A party or person affected by such order may move for the modification, dissolution or discharge of such order.
(Art. 16, §§ 91, 129.)

Explanatory note.—This Rule is intended to supersede Article 16, Section 129, which is applicable to equity actions only. The Committee thought that the Rule should be made generally applicable to actions both at law and in equity so that a law court would, for example, be permitted in a proper case to pass a charging order with respect to property which was the subject of the litigation, as e. g., to charge the rents issuing out of property involved in an ejectment or replevin action. The equity courts have heretofore had this power under the statutory source.

EQUITY

Rule 572. Property or Income—Possession, Receipt and Charging Orders ..... Equity

a. *Court Order.*

A court of equity may, subject to the provisions of Rule 1195 (Injunction), at any stage of an action, on motion or of its own accord, pass an order with regard to the possession of any property, or with reference to the receipt of, or charging of the income, interest or dividends therefrom, for any purpose, on such terms and conditions as justice may require.

b. *Order—Not Binding Without Notice.*

A person shall not be bound by such order until he shall have received actual notice thereof by personal service or otherwise.

c. *Motion to Modify or Discharge.*

A party or person affected by such order may move for the modification, dissolution or discharge of such order.
(Art. 16, §§ 91, 130.)

Cross reference.—For right of appeal in such proceedings, see Code, article 5, § 7, and article 16, §§ 90 and 129.

Explanatory note.—Proposed new Rule 572 makes the following changes in the present Rule: (1) the Rule is no longer limited to *pendente lite* orders; (2) the action need not be one "concerning property"; and (3) Section b has been added.

Proposed new Rule 532 gives both law and equity courts the power to issue the types of orders enumerated in Section a provided the order is with respect to "property with which the action is concerned". In view of the recommended adoption of General Rule 532, it was felt that Rule 572 should be amended to eliminate the provision in present Rule 572 that the property affected by the order must be "concerned" in the action since Article 16, Section 130 (to be superseded by new Rule 572) does not contain this limitation.

Section b is based upon Article 16, Section 91. A similar provision is contained in proposed new Rule 532. Section c is substantially the same as Section b of present Rule 572.

Committee note.—Rule 532 (Property or Income — Possession, Receipt and Charging Orders) similarly authorizes a law court to pass such orders with respect to "property with which the action is concerned". For example, Rule 532 would authorize the passage of a charging order in an appropriate case with respect to property which is the subject of litigation in an ejectment action.

Chapter 600.

Judgment.

RULES 601-699

General

GENERAL

Rule 621. Judgments in Actions Affecting Lands in More than One County ..... Gen'l.

a. *Proceedings—Where Filed.*

Upon the final termination of an action which affects title to real or leasehold property located in a county other than that in which the judgment was rendered, a certified copy of the docket entries, the pertinent pleadings and the final judgment shall be filed with the clerk of such other county. The clerk shall thereupon docket, index and record such documents pursuant to Rule 619 b (Recording of Judgment—Where Title to Real Estate Involved).

b. *Notice.*

Except as to persons with actual notice thereof, no judgment in any such proceeding shall affect the title to any real or leasehold property in such other county until section a of this Rule has been complied with.

(Cf. Art. 16, §§ 100 and 102.)

Cross references.—For examples of procedures intended to be covered by this Rule, when applicable, see Rules U1-U20 (Eminent Domain); Rules Y70-Y79 (Ground Rents); Rules J70-J73 (Burial Grounds); Rules BJ70-BJ73 (Partition); Rules 1150-1156 (Ejectment).

See also Rule 619 (Recording of Judgment); Rule 620 (Lien of Judgment); Rule 1301 [BR1-BR6] (Judicial Sales); Rule 1391 [W70-W80] (Mortgage—Foreclosure); Rules BD1-BD4 (Lis Pendens).

Explanatory note.—When the present Ejectment Rules (Rules 1150 et seq.) were first considered by the Committee, it was realized that neither by Rule nor by statute (except in limited classes of cases, such as judicial sales or partition) were there any general provisions for adequate recording of proceedings affecting title to real estate lying in more than one county. The problem was essentially that of giving notice to title examiners and others in the county in which part of the land lay, but in which the proceedings were not actually being conducted. It could arise in numerous types of cases, such as partition, ejectment, condemnation, etc.

It was concluded that there were two points at which notice should be given by filing or recording appropriate papers in the "second" county; first, at the commencement of the action, and second, after final judgment. Consequently, the Committee has drafted two proposed Rules, one dealing with *Lis Pendens* (Rules BD1-BD4) and the other that printed above.

Both specify the procedure to be followed in an action dealing with title to real or leasehold property so as to affect such title in a county in which a part of the property lies, but where the action is not being conducted. The procedure is similar to that now provided for in Article 16, Sections 100 *et seq.*

In connection with the Judgments Rule, printed above, the Committee has also recommended that Rule 1391 e 5 (Mortgage—Foreclosure — Procedure Following Sale) be amended to refer to Rule 1301 e as well as Rule 1301 f and that Rule 1301 e (Judicial Sales—Sale of Real Property—Recording Proceedings) be amended to indicate that the procedure therein presented is applicable to mortgage foreclosures involving land lying in more than one county, as well as in judicial sales. The recording provisions in such cases are similar to those called for by the above Rule.

Chapter 1300.

Special Proceedings—Continued.

RULES 1300-1399

GENERAL

Article I. Judicial Sales

Rule 1301. Judicial Sales.

e. *Sale of Real Property—Recording Proceedings.*

Upon the making of a judicial sale of real property or chattels real to be ratified by a court of a county other than that in which all such real property or chattels real is located, the person making such sale shall cause to be docketed in the circuit court for each county where any part of such real property or chattels real is located, a certified copy of the docket entries, bill (if any), decree (if any), report of sale and final order of ratification.
(Art. 16, §§ 100, 102.)

Explanatory note. — See explanatory note following proposed Rule 621 (Judgments in Actions Affecting Lands in More than One County) for statement of reason for proposed amendment to this Rule.

EQUITY

Article II. Fiduciaries

Rule 1380. Fiduciary and Personal Representative—Transfer or Payment of Property.

a. *Application of Rule.*

1. Fiduciary—Definition.

"Fiduciary", as used in this Rule, includes a fiduciary as defined in Rule 1371

(Fiduciary—Definition) and also an executor or administrator administering an estate under the jurisdiction of a court of equity.

Explanatory note. — Article 93, sec. 219 provides that where property is to be transferred to a fiduciary by a personal representative or a trustee appointed by will, the application for the transfer must be made to the Orphans' Court. The Committee feels that it is undesirable to apply to the Orphans' Court where the estate is administered in equity and therefore will recommend that the statute be amended to apply only where the estate is not being administered in equity. The rule will permit application to the equity court where the assets are in the hands of a personal representative as well as a fiduciary more narrowly defined.

2. Sales under Rule 179 Excluded.

This Rule shall not apply to the procedure for the sale of property in this State of a nonresident under disability. Such sales shall be exclusively governed by Rule 179 (Sale of Property of Nonresident Under Disability).

b. *Petition for Authority.*

1. Who May File.

A fiduciary, whether resident or nonresident, or whether or not appointed by a court of another state, may file a petition in a court of equity for authority to transfer, pay or deliver a legacy, bequest or distributive share in an estate administered in an equity court of this State, the proceeds of a sale made under an equity decree, or the corpus or income of any fiduciary estate, whether invested or uninvested, to the petitioner or to another fiduciary.

2. Allegations.

A petition filed pursuant to this Rule shall include such facts as will show that—

(a) The proposed transferee has been duly appointed, and the manner in which such appointment was made; and

(b) Such person has given adequate bond or other security for the faithful performance of his duties, if bond or other security is required under the laws of the jurisdiction where such person is qualified to act as fiduciary.

3. Accompanying Certificates.

Such petition shall be accompanied by a duly authenticated copy of the instrument or court order appointing the proposed transferee and of the bond or other security, if any, given by him and proof that said appointment and security are still in effect.

4. Court.

Such petition shall be filed (i) in the court which has assumed jurisdiction over the estate or part thereof sought to be transferred or by authority of which such sale was made, or (ii) if there be no such court, then in the court exercising equity jurisdiction in the county in which the transferring fiduciary resides, is regularly employed or maintains a place of business, or (iii) if there be no such fiduciary in Maryland, then in the court exercising equity jurisdiction in the county in which a substantial portion of such property is located.

c. *Qualifications of Transferee—Appointment—Residence.*

The court may authorize property to be transferred, paid or delivered pursuant to this Rule only to a person who has properly qualified to act as a fiduciary under the laws of any state and has given adequate bond or other security for the performance of such duties if bond or other security is required by the laws of such state. Such person may reside in Maryland or elsewhere.

d. *Nature of Proceeding—Notice.*

1. Application by Transferring Fiduciary.

The petition referred to in section b of this Rule, when filed by the fiduciary seeking to transfer, pay or deliver property held by him may be filed *ex parte.*

However, before passing a final order, the court may require that such persons be made party to the proceeding and be given such notice and opportunity to be heard as may appear in its discretion, necessary to protect the estate and the parties interested therein.

2. Application by Other Party—Notice.

If such petition is filed by a person other than the person who holds title to, or is required to account for, such property, the court, prior to final order, shall require that the petition be served upon the person having title to, or required to account for, the property, and shall pass an order requiring him to show cause on or before a date specified in such order why the relief prayed should not be granted.

e. *Order Authorizing Transfer—Condition.*

Authority may be granted to transfer, pay or deliver property pursuant to this Rule only where the court finds that such transfer, payment or delivery will be in the best interest of the persons beneficially interested in the estate.
(Art. 16, §§ 146, 188, 189; art. 93, §§ 216, 219.)

Cross references.—See the following:

Code, article 93, § 216 for procedure for transfer, delivery or payment where the estate is administered in the Orphans' Court.

Code, article 16, § 190 with respect to the release of a fiduciary making transfer, payment or delivery of property pursuant to this Rule.

Rules R70 to R80 for general provisions regarding Disability—Persons under.

Rule 179 for procedure for sale of property in this State owned by nonresidents under disability.

Article IV. Foreclosure of Mortgages and Other Security Devices Which May Be Foreclosed by Judicial Proceedings

Rule 1391. Mortgage—Foreclosure.

e. *Sale.*

5. Procedure Following Sale—Report—Ratification.

A sale made pursuant to this Rule shall be reported under oath to the court in which the action was filed, and there shall be the same proceedings on each such report as if the sale were made by a trustee under a decree of said court pursuant to sections e (Sale of Real Property—Recording Proceedings) and f (Procedure Following Sale) of Rule 1301 (Judicial Sales).
(Art. 66, § 7 (a).)

Explanatory note. — See explanatory note following proposed Rule 621 (Judgments in Actions Affecting Lands in More than One County) for statement of reason for proposed amendment to this Rule.

Rule 1392. Deed of Trust—Foreclosure—Release—*Removal.*

c. *Failure to Foreclose—Removal of Trustee.*

1. Notice to Trustee.

Where default has occurred in condition of a deed of trust upon which foreclosure is predicated, and a trustee who has the right to institute foreclosure action fails or neglects to do so, the holders of not less than 25% of the beneficial interest thereunder may notify the trustee by registered mail at his last known address that unless the trustee institutes such action within 15 days from the date of such notice, a petition may be filed pursuant to this section in the court specified in the notice for removal of the trustee.

2. Petition to Remove Trustee.

Upon the expiration of such 15-day period, if no action to foreclose has been instituted, such beneficiary, or his successor in interest, may file a petition under oath in a court of equity in which foreclosure may be instituted alleging compliance with subsection 1 above, attaching a copy of the notice sent pursuant to

said subsection, and any answer to such notice as he may have received as an exhibit, and praying the court to remove the trustee and to appoint a new trustee.

3. Action by Court.

The court may act upon such petition *ex parte* and pass an order removing the trustee and appointing a new trustee, with all the title and powers of the trustee so removed.

Committee note.—The addition of Section c to Rule 1392, is intended to supersede Chapter 466, Laws 1959, which adds Section 187 A to Article 16 of the Code.

The main differences between the statute and the new section are as follows:

1. Section c requires that the petition be filed by the holders of at least 25% of the beneficial interest in the outstanding debt, while the statute simply provides that the action may be instituted by the "party or parties secured". Note a similar 25% requirement in Rule 1391 d 2 (a) (1) requiring a mortgage foreclosure action to be brought, or concurred in, by the record holders of not less than 25% of the unpaid indebtedness.

2. Section c requires a 15-day notice by mail to the trustee. The statute contains no notice provision, but ambiguously provides that the petition for removal be filed *ex parte* "in the foreclosure proceeding".

3. The standard for removal in Section c is failure or neglect to foreclose, as contrasted to more general statutory grounds of nonresidency, the fact that the trustee is "not readily available to exercise the power or any other good and sufficient reason".

4. Section c makes the action to be taken discretionary with the court, while the statute appears to make removal mandatory.

PART II
Revision of Chapter 700 (Criminal Causes)

Chapter 700.
Criminal Causes.
RULES 701-799

Rule 701. Purpose and Construction.

The rules in this Chapter are intended to provide for the just determination of every criminal cause. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Failure to set forth in this Chapter any provision of common law or statute,

not inconsistent with the rules in this Chapter, shall not be construed as an implied repealer thereof.
(Rule 701.)

Explanatory note.—Where the source of a rule is designated "Uniform Rule", the designation is to the "Uniform Rules of Criminal Procedure" drafted by the National Conference of Commissioners on Uniform State Laws.

Rule 702. Definitions.

As used in this Chapter, the following terms have the following meanings, except insofar as expressly otherwise provided, or as may result from necessary implication.

a. *Indictment.*

"Indictment" shall include an indictment, a criminal information, and a warrant issued by a justice of the peace where a jury trial was prayed before a trial magistrate or an appeal has been taken from a trial magistrate.
(Proposed.)

b. *Capital.*

"Capital" when used to describe an offense, punishment, or legal proceeding, means an offense, punishment, or legal proceeding in which the sentence may be death.
(Proposed.)

c. *Accused.*

"Accused" means a person charged with a criminal offense; "accused", "defendant" and "traverser" have the same meaning.
(Proposed.)

d. *State's Attorney.*

"State's attorney" means an officer responsible for the prosecution of a criminal charge on behalf of the State or a political subdivision thereof, including a deputy or assistant State's attorney.
(Proposed.)

e. *Scope of Term "Instructions".*

"Instructions", as used in this Chapter, includes advisory instructions on the law and any summation of or reference to the evidence.
(Rule 739 h.)

Rule 705. Juvenile Causes—Waiver of Jurisdiction.

Where in a proceeding in a juvenile court the court waives jurisdiction or an adult exercises his right to trial according to the usual criminal procedure, the State's attorney shall immediately procure an indictment or, where permitted by these Rules, shall prepare and file an information against the accused.
(Proposed.)

Cross references.—See Rule 910 (Adult—Right to Trial According to Usual Criminal Procedure) and Rule 911 (Waiver of Jurisdiction). See also, State v. Warden, 195 Md. 713, 714, 72 A. (2d) 741; Heath v. State, 198 Md. 455, 464, 85 A. (2d) 43.

Rule 706. Warrant—Process—Pleading.

a. *Issuance by Clerk.*

When an indictment or information has been filed, a warrant for the arrest of each defendant named therein shall be issued by the clerk. If the defendant is a corporation, or if the court so directs, or if the State's attorney so requests, a

summons shall be issued for the defendant instead of a warrant.
(Proposed.)

Note.—A warrant of arrest may also be issued by a Justice of the Peace; see Committee note at the end of this Rule.

b. *Execution.*

A warrant shall be executed by the arrest of the person named therein. The officer making the arrest need not have the warrant in his possession at the time of the arrest, but in that case, he shall at that time inform the defendant of the offense charged and of the fact that a warrant has been issued, and shall show the warrant to the defendant as soon as possible.
(Uniform Rule 5 c.)

c. *Other Process or Pleading.*

The service of process or pleading, other than a warrant, in a criminal proceeding shall be made in the manner provided in Rule 104 (Service of Process—Party) Sections "a" to "g", inclusive; 106 (Service of Process—Corporation); 114 (Witness—Summons for); and 306 (Service of Pleading); insofar as the same are not inconsistent with the Rules contained in this Chapter.
(Proposed.)

Committee note.—Rule 706 is not intended to affect the power of a justice of the peace to issue a warrant of arrest or a summons nor the procedure by justices of the peace for issuing such warrants of arrest or summons.

The Committee has intentionally omitted from these Rules venue, proceedings before the magistrate, and the selecting of the Grand Jury, as well as proceedings before the Grand Jury.

Rule. 708. Information.

A person charged with the commission of a misdemeanor, before indictment by the grand jury, may be prosecuted upon an information filed by the State's attorney. A person charged with the commission of a felony may not be prosecuted upon an information except pursuant to Rule 709 (Immediate Trial).
(Uniform Rule 14.)

Rule 709. Immediate Trial.

a. *Petition.*

An accused, including an accused who has prayed a jury trial before a trial magistrate, or who has appealed from a conviction before a trial magistrate, may file with the clerk a petition signed by the accused setting forth that there is a criminal charge pending against him, that he desires to waive his right to action by the grand jury, or that a jury trial was prayed before the trial magistrate, or that the hearing before the magistrate resulted in conviction and appeal, as the case may be, and that he seeks an immediate trial.
(Proposed; cf. Art. 27, § 592.)

b. *Information by State's Attorney.*

Upon the filing of a petition pursuant to this Rule, the State's attorney shall immediately file an information against the accused except in a case originating before a trial magistrate which is to be tried upon warrant.
(Cf. Art. 27, § 592.)

c. *Time of Trial.*

An accused who has filed a petition under this Rule shall be tried, without regard to term of court, within such reasonable time as to accord him a speedy trial.
(Art. 27, § 592.)

Rule 710. Summons for Witness in Aid of Information.

The State's attorney may issue a summons for a witness for the purpose of obtaining evidence to prepare an information. The State's attorney shall report to the court a refusal by a witness to obey such summons and the court may issue a bench warrant for such witness.
(Art. 27, § 592.)

Rule 712. Indictment.

a. *Form and Content.*

An indictment shall contain a plain, concise and definite statement of the essential facts constituting the specific offense with which the defendant is charged. It need not contain any other matter not necessary to such statement, nor need it negative an exception, excuse or proviso contained in a statute creating or defining the offense charged. An allegation made in one count may be incorporated by reference in another count. An unnecessary allegation may be disregarded as surplusage and on motion of the defendant may be stricken from the indictment by the court.
(Uniform Rule 16.)

b. *Feloniously—Unlawfully.*

The word "unlawfully" shall cover both a felony and a misdemeanor and it shall not be necessary to use the word "feloniously" in charging an offense.
(Proposed.)

c. *Money—Description of.*

In an indictment it shall be sufficient to describe money as so many dollars and cents current money, without specifying the particular notes, denominations, coins or certificates circulating as money of which said amount was composed.

Cross reference.—See art. 27, § 613 (Description of money in indictments for robbery, larceny, embezzlement, etc.)

d. *Conclusion.*

An indictment shall conclude with the words "against the peace, government and dignity of the State."

Cross reference.—For constitutional requirement, see art. IV, § 13, 9 Md. Code (1957).

e. *Signature.*

An indictment, except a warrant, shall be signed by the State's attorney. An objection to an indictment on the ground that it was not signed may not be made after a plea to the merits has been entered.
(Uniform Rule 17.)

Rule 713. Subsequent offenders.

a. *Indictment—Content.*

In a case where a greater punishment is prescribed for a second or subsequent conviction of the same offense the indictment for each succeeding offense shall charge only the current offense and shall not refer to the fact that the State intends to prosecute the defendant as a second or subsequent offender.

b. *Addendum—Content.*

There shall be attached to such an indictment an addendum which shall warn the defendant that the State has evidence that he has formerly been convicted of the same offense, including the date and court in which he was previously convicted, that it intends to prosecute the accused for the current offense as a second or subsequent offender, the maximum punishment which may be imposed

upon the defendant if he is convicted of the current offense and found to be a second, or subsequent offender, and the right of the accused under this Rule to elect that the issue of whether or not he is a second or subsequent offender be tried concurrently with the trial for the current offense or be determined by the court or jury after the verdict on the current offense.

c. *Indictment and Addendum—Service.*

The indictment and addendum shall be served upon the defendant pursuant to Rule 706 (Warrant—Process—Pleading).

d. *Trial—Election by Defendant.*

If the defendant so elects upon arraignment the issue of whether or not he is a second or subsequent offender shall not be determined until after he is convicted of the current offense and if he elected a jury trial shall not be disclosed to the jury during the trial for the current offense, but shall be determined pursuant to section f of this Rule.

e. *Failure to Elect.*

In the absence of an election by the defendant both the current offense and the issue of whether or not the defendant is a second or subsequent offender shall be tried concurrently.

f. *Separate Trial of Subsequent Offender Issue.*

If a defendant elects to have the issue of whether or not he is a second or subsequent offender tried separately pursuant to section d of this Rule, this issue shall be submitted to the jury, if the current offense was tried by a jury, or to the court, if the current offense was tried by the court, or to the court, if the defendant waives a jury trial on this issue. Both the State and the defendant may submit evidence and be fully heard on this issue.

g. *Recess or Dismissal of Jury.*

The court may in its discretion recess the jury which heard the current offense or dismiss that jury and submit the issue of second or subsequent offender to another jury to be later impaneled.

h. *New Jury—Challenges.*

In the selection of such a new jury there shall be the right to peremptory challenge pursuant to section a of Rule 746 (Challenge—Peremptory).
(Proposed.)

Rule 714. Amendment.

a. *Indictment or Information.*

The court may permit an indictment or information to be amended at any time before verdict as to matter of form, but not as to matter of substance.

b. *Warrant.*

The court may permit a warrant to be amended at any time before final judgment, on motion of the State's attorney, or its own motion; but such amendment shall not change the character of the offense charged.
(Art. 52, § 22.)

Cross references.—See art. 27, § 603 (amendment for misnomer of defendant), § 604 (amendment for misnomer of persons other than defendant) and § 606 (certain defects or imperfections not grounds for quashing or arrest of judgment).

Rule 715. Bill of Particulars.

a. *Generally.*

On motion of the defendant, the court may order the filing of a bill of particulars within such time as the court may fix. Such motion shall be made before

or within a reasonable time after arraignment, shall be in writing, unless otherwise ordered by the court, and shall specify the particulars sought by the defendant.
(Uniform Rule 19.)

b. *False Pretenses.*

Where the offense charged is false pretenses, the State's attorney shall, upon demand of the defendant, file a bill of particulars within a reasonable time.
(Art. 27, § 608.)

Committee note.—This is the only case in which the defendant in a criminal proceeding has an absolute right to particulars.

c. *Objection.*

An objection to a bill of particulars shall be made by filing an exception thereto or by a motion for appropriate relief.
(Proposed.)

d. *Amendment.*

A bill of particulars may on motion be amended at any time subject to such conditions as justice may require.
(Uniform Rule 19.)

Rule 716. Joinder.

a. *Offenses.*

Two or more offenses may be charged in the same indictment in a separate count for each offense.
(Uniform Rule 20.)

b. *Defendants.*

Two or more defendants whether they be principals or accessories may be charged in the same indictment if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and it shall not be necessary to charge all the defendants in each count.
(Uniform Rule 20.)

Rule 717. Names of Witnesses on Indictment.

When an indictment is filed, the names of the witnesses on whose evidence it was based shall be endorsed thereon. Failure so to endorse the names shall not affect the validity or sufficiency of the indictment, or the admissibility of other evidence, but the court, on motion of the defendant, shall direct the names to be so endorsed, or otherwise furnished to the defendant, and may grant such continuance or postponement of the case as justice may require.
(Uniform Rule 21.)

Rule 719. Arraignment.

a. *How Made.*

Arraignment shall be conducted in open court and shall consist of reading the indictment to the accused or stating to him the substance of the charge and calling on him to plead thereto. The accused shall be furnished a copy thereof as soon as practicable after it shall have been prepared and in any event within a reasonable time before he is called upon to plead, and at the expense of the prosecuting authority.
(Rule 723.)

b. *Assignment of Counsel.*

1. Advice by Court.

In a trial for an offense, if the accused appears in court without counsel, the court shall advise him of his right to counsel.

2. When Required—Conditions.

Unless the accused elects to proceed without counsel or is financially able to obtain counsel—

(a) The court shall assign counsel to represent him if the offense charged is one for which the maximum statutory punishment is death or confinement in the penitentiary for five years or more.

(b) The court may assign counsel to represent the accused in any other case, and in determining whether or not to assign counsel, the court shall take into consideration the complexity of the case, the youth, inexperience and mental ability of the accused and any other relevant consideration.

3. Affidavit of Indigency.

The court may require a claim of indigency by an accused seeking the assignment of counsel to be verified by a sworn statement in such form and with such content as the court designates.

c. *Time to Plead.*

In a case where counsel shall be assigned, pursuant to section b of this Rule, such counsel shall be allowed a reasonable time to plead.

d. *Record to Show Compliance.*

"The docket entries or transcript shall affirmatively show compliance with this Rule."

(Uniform Rule 23; Rule 723.)

Cross reference.—In criminal cases, for cost of appeal to persons claiming to be indigent and allowance of court-appointed counsel fee, see Rule 883 (Waiver of Costs) and Code art. 5, §§ 15, 15A (Laws 1958, ch. 68).

Rule 720. Plea.

An accused may plead not guilty, not guilty by reason of insanity as provided by statute, guilty or, with the consent of the court, *nolo contendere.*

(Rule 724.)

Rule 721. Refusal to Plead or to Accept Guilty Plea.

The court may refuse to accept a plea of guilty. If an accused refuses to plead, or if the court has refused to accept a plea of guilty, the court shall enter a plea of not guilty.

(Rule 724.)

Rule 722. Change of Plea of Guilty.

The court may strike out a plea of guilty at any time and enter a plea of not guilty, if it deems such action necessary in the interest of justice.

(Uniform Rule 24.)

Rule 723. Nolo Contendere.

a. *Application—Permission.*

An accused who desires to enter a plea of *nolo contendere* must apply to the court for permission to enter this plea. The court may require the accused to provide such information as it deems necessary to enable it to determine whether or not it will consent to the entry of this plea.

(Proposed.)

b. *Effect.*

The plea of *nolo contendere* has the effect of submitting the defendant to punishment by the court.
(Proposed.)

c. *Action by Court.*

Following the entry of a plea of *nolo contendere* the court shall proceed to determine and impose the sentence as on a plea of guilty, but without finding a verdict of guilty.
(Proposed.)

Rule 724. Plea to a Degree.

A defendant may enter a plea of not guilty to one degree and a plea of guilty to another degree of an offense, which, by law, may be divided into degrees of guilt.
(Proposed.)

Rule 725. Pleadings—Motions—Exceptions.

a. *Pleadings.*

Pleadings in a criminal proceeding shall be the indictment, the information, or the warrant where a jury trial was prayed before a trial magistrate or an appeal has been taken from a trial magistrate; the pleas of not guilty, not guilty by reason of insanity as provided by statute, guilty, or *nolo contendere;* the motion to dismiss, and the motion to grant appropriate relief. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised by the motion to dismiss or to grant appropriate relief.
(Uniform Rule 25 & Rule 725.)

Committee note.—Motions for specific relief after *verdict* are not intended to be abolished by this rule. See Rule 759 (Motions After Verdict).

b. *Defenses and Objections Before Trial.*

Defenses and objections based on defects in the institution of the prosecution or in the indictment, other than that it fails to show jurisdiction in the court or to charge an offense, must be raised by motion before trial. Such motion shall include all such defenses and objections then available to the accused. Failure to present any such defense or objection as herein provided shall constitute a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment to charge an offense shall be noticed by the court at any time during the proceeding. Any defense or objection capable of determination without the trial of the general issue may be raised before trial by motion.
(Uniform Rule 25 & Rule 725.)

c. *Motion.*

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.
(Rule 725 b 5.)

d. *Hearing on Motion.*

A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. All issues of fact raised by such motion may be de-

termined by the court without a jury on affidavit or in such other manner as the court may direct.
(Uniform Rule 25 & Rule 725.)

e. *Effect of Determination.*

If a motion is determined adversely to the accused he may plead. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, it may order that the accused be held in custody, or that his bail be continued for a specified time pending the filing of a new indictment.
(Uniform Rule 25 & Rule 725.)

f. *Exceptions.*

Exceptions shall be governed by the provision of Rule 522 (Objections to Ruling or Order—Method of Making), 510 (Reservation of Points for Court *In Banc*), and 564 b 3 (Trial by Court—No Instructions, Objections or Exceptions).
(Proposed.)

Rule 727. Deposition.

a. *When Taken.*

1. Witness—Generally.

If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, may, in its discretion, upon motion of an accused or State's attorney and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document or tangible object, not privileged, be produced at the same time and place.
(Rule 727 a).

2. Witness Committed for Default of Bail.

If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken in the presence of the accused. After the deposition has been subscribed the court may discharge the witness.
(Rule 727 a.)

Cross references.—See Rule 732 (State Witnesses—Commitment). See also Laws 1959, ch. 131, adding § 20A to article 35, Md. Code 1957.

b. *Presence of Accused.*

If a deposition is taken at the instance of the State, the accused shall have the right to be present at the taking thereof and if in custody, shall be produced at the examination and kept in the presence of the witness during the examination by the officer having the defendant in custody; the State shall pay the reasonable expenses of travel and subsistence of the accused and his counsel in attending such examination.
(Cf. Uniform Rule 27 c.)

c. *Notice.*

The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.
(Rule 727 d.)

d. *How Taken.*

A deposition shall be taken as provided in Rules 403 (Before Whom Taken), 404 (Stipulation as to Taking of Deposition), 409 (Examination), 411 (Correction, Signature, Certification and Filing of Deposition), and 412 (Error and Irregularity in Deposition).
(Cf. Rule 727 c.)

e. *Use.*

At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify, because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by summons. A deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.
(Rule 727 d.)

f. *Objection to Admissibility.*

An objection to receiving in evidence a deposition or part thereof may be made as provided in Rule 413 b (Use of Deposition).
(Cf. Rule 727 e.)

g. *Joint Defendants.*

Where persons are jointly tried, the court for good cause shown may refuse to permit the use at the trial of a deposition taken at the instance of one accused over the objection of any other accused.
(Uniform Rule 27 f and Rule 727 f.)

Rule 728. Discovery and Inspection.

Upon motion of a defendant, at any time after the filing of an indictment, the court shall order the State's attorney:

a. *Tangible Objects from Defendant.*

To permit the defendant to inspect, copy, photograph, and make expert tests and experiments on designated books, papers, documents and tangible objects belonging to the accused or obtained by seizure or process.

b. *Tangible Objects Not from Defendant.*

Upon good cause shown to permit the defendant to inspect, copy, photograph, and make expert tests or experiments on designated books, papers, documents and tangible objects which the State proposes to use at the trial which do not belong to the accused and were not obtained from the accused or by seizure or process.

c. *Defendant's Statements.*

To furnish the defendant copies of any written statement made by him and the substance of any oral confession or admission made by him which the State proposes to use at the trial.

d. *Names of Witnesses.*

To furnish the defendant a list of the names and addresses of the witnesses whom the State intends to use at the trial.

e. *Inspection Before Trial.*

The court may order a person, other than the accused, to produce before the court, a book, paper, document or object designated in a summons, prior to the trial and may upon its production permit such book, paper, document or object or portion thereof to be inspected and copies made thereof by the parties or their attorneys.
(Proposed and Rule 728.)

Rule 731. Summons—Witness.

a. *Issuance and Service.*

At the request of either the State's attorney or the defendant, a summons commanding each person to whom it is directed, to attend and give testimony at a specified time and place, or to produce a book, paper, document, or tangible object designated therein, shall issue and may be served as provided in a civil action.
(Uniform Rule 29 a.)

Cross references.—Rule 104 (Service of Process—Generally); Rule 114 (Witness —Summons for); Rule 115 (Summons Duces Tecum).

b. *Indigent Accused.*

Upon filing of an affidavit by an indigent accused stating the testimony which each witness, for whom a summons is requested is expected to give, and showing that the evidence of such witness is material to the defense, that such witness must be tendered fees and mileage before he can be attached for failure to obey a summons, that the accused cannot safely go to the trial without such witness and that the accused is unable to pay the fees of such witness, the court may by appropriate order direct the costs incurred by the process and the fees of the witness so summoned to be paid in the same manner as similar fees and costs are paid in the case of a witness summoned in behalf of the State. If the defendant so requests, the court shall not disclose to the State's attorney the statement of testimony expected from the witness, and may order the affidavit sealed until after the witness has testified.
(Uniform Rule 29 b and Proposed.)

c. *Failure to Obey Summons.*

A person who without adequate excuse fails to obey a summons served upon him may be proceeded against as for contempt.
(Uniform Rule 29 d.)

Cross reference.—For procedure in contempt proceeding, see Rule —— (Contempt).

Rule 732. State Witnesses—Commitment.

a. *Application by State's Attorney.*

When a State's attorney is notified that a witness has been committed to jail in default of bond and the State's attorney desires to continue the incarceration of such witness for more than seven days from the date he was so committed, the State's attorney shall make application to the court pursuant to this Rule.

Cross reference.—For requirement of notification to State's attorney, see Laws 1959, ch. 131, adding § 20A to article 35, Md. Code 1957.

b. *Form and Content.*

The application shall be in writing and shall contain the following:
(1) The name of the witness and the place of his incarceration.
(2) The designation of the case for which his testimony is required.

(3) A summary of the information or testimony of which the State's attorney believes the witness has knowledge.
(4) The reason that such witness is necessary for the prosecution of the case.
(5) The reason why it is necessary in the State's attorney's opinion to require bond to insure the presence of the witness.

c. *Service.*
A copy of the application shall be served on the person having the witness in custody and on the witness pursuant to Rule 104 b (Service of Process—Generally—How Made).

d. *Hearing.*
The court shall set the matter for a hearing to be held within three (3) days from the date the application is filed and shall direct the person having custody of the witness to produce him at the hearing.

e. *Scope of Inquiry.*
At the hearing the court shall inquire into the following:
(1) Whether the witness has knowledge of facts necessary to the prosecution.
(2) Whether other witnesses, who have knowledge of the same facts, are reasonably available to the prosecution.
(3) Whether it is necessary to detain the witness to insure his presence when required.
(4) Such other matters as justice may require.

f. *Action at Hearing.*
The court may
(1) Discharge the witness from custody;
(2) Continue the witness in custody until bond is given;
(3) Continue the bond in the same or a different amount from that set by the committing magistrate;
(4) Release the witness on his own recognizance; or
(5) Take such other action as justice may require.

Cross reference.—See Rule 727 a (Deposition—When Taken), providing that if a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken in the presence of the accused and after the deposition has been subscribed the court may discharge the witness.

g. *Action After Hearing.*
If the witness is continued in custody the judge who conducted the hearing shall cause the case to be tried promptly thereafter. If necessary the grand jury and the petit jury shall be reconvened. If the case is not tried within sixty (60) days of the date of the hearing, the witness shall be released on his own recognizance unless his custody be continued by further order of the court.
(Proposed.)

Rule 734. Joint Trial of Indictments.

The court may order two or more indictments to be tried together if the offenses and the defendants, if there be more than one, could have been joined in a single indictment.
(Uniform Rule 30.)

Rule 735. Prejudicial Joinder.

If it appears that an accused or the State will be prejudiced by a joinder of offenses or of defendants in an indictment, or by joinder for trial together, the court may order an election or separate trials of counts, grant separate trials of defendants or provide such other relief justice requires. A motion under this

Rule may be made only before the jury is sworn, or, where trial by jury is waived, before any evidence is received.
(Uniform Rule 31.)

Rule 738. Removal.

a. *Civil Rule Applicable.*

Rule 542 (Removal) shall apply to removal in criminal proceedings, subject to sections b and c of this Rule.
(Const. art. IV, § 8; art. 75, §§ 44-55.)

b. *Additional Requirement.*

Except where the offense is punishable by death, in addition to complying with Rule 542 a 1 (Removal: Right of Suggestion Under Oath), it shall be necessary for the party making such suggestion to make it satisfactorily appear to the court that such suggestion is true, or that there is reasonable ground for the same.
(Const. art. IV, § 8; art. 75, §§ 44-55.)

c. *Further Removal.*

A party may have a further removal upon compliance with section "a" of this rule, and in addition, such party shall make it satisfactorily appear to the court that such suggestion is true or that there is reasonable ground for the same.
(Const. art. IV, § 8; art. 75, §§ 44-55.)

Rule 741. Jury Trial—Waiver.

An accused may waive a jury trial and elect to be tried by the court. If an accused elects to be tried by the court the State may not elect a jury trial. An election to be tried by the court must be made before any evidence in the trial on the merits is taken unless otherwise provided by local rule of court.
(Uniform Rule 34.)

Rule 742. Court Trial—Verdict.

When an accused is tried by the court sitting without a jury, the court shall render a verdict upon the facts and the law. The court may render such verdict without comment, or it may state the grounds for its decision either in open court or by written memorandum.
(Cf. Rule 741 a.)

Rule 743. Jurors—Number.

A jury shall consist of twelve persons but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than twelve.
(Uniform Rule 34.)

Rule 744. Challenge for Cause.

a. *To Array—Grounds.*

A party may challenge the array on the ground that the jurors were not selected, drawn, or summoned according to law, or for any other ground that would disqualify the panel as a whole.
(Uniform Rule 35.)

b. *To Array—When Made.*

A challenge to the array shall be made and determined before any individual juror from that array is examined.
(Uniform Rule 35.)

c. *To Individual—Grounds.*

Any party may challenge an individual juror on any ground which by law is a ground of challenge for cause.
(Uniform Rule 35.)

d. *To Individual—When Made.*

A challenge to an individual juror shall be made and determined before he is sworn to try the case, but the court for cause may permit it to be made after he is sworn but before any evidence is received.
(Uniform Rule 35.)

Rule 745. Examination on Voir Dire.

The court may permit the parties to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the parties to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions proposed by the parties as it may deem proper.
(Uniform Rule 35 b.)

Rule 746. Challenge—Peremptory.

a. *Number.*

1. Non-Penitentiary and Non-Capital Case.

In a trial for an offense not punishable by death or confinement in the penitentiary, each party shall be permitted four peremptory challenges. Several defendants shall be considered a single party for this purpose. Whenever it appears that the trial involves two or more defendants having adverse or hostile interests, the court may allow additional peremptory challenges, but no defendant shall be allowed more than four such challenges.

2. Penitentiary or Capital Case.

In a trial for an offense punishable by death or confinement in the penitentiary, each defendant shall be permitted twenty peremptory challenges and the State shall be permitted ten peremptory challenges for each defendant.
(Art. 51, §§ 22-24.)

b. *Order in Which Made.*

At the request of a defendant peremptory challenges shall be made alternately, beginning with the State.
(Proposed.)

c. *When Made.*

A peremptory challenge may be exercised as a matter of right until the time that the jury is sworn.
(Proposed.)

Rule 747. Swearing of Jury.

All members of a jury and alternate jurors, if any, shall be sworn at the same time.
(Proposed.)

Rule 748. Jurors—Alternate.

The court may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors, who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged when the jury retires to consider its verdict. For each alternate juror to be selected, the State shall be entitled to one additional peremptory challenge for each defendant, and each defendant shall be entitled to two additional challenges. Such additional peremptory challenges may be used against alternate jurors only, and other peremptory challenges may not be used against an alternate juror.
(Art. 51, § 30, and Uniform Rule 35 d.)

Rule 749. Judge—Disability.

If by reason of termination of office, absence, death, sickness, or other disability, the judge before whom an accused has been tried is unable to sentence the accused convicted before him, or is unable to perform the acts and duties to be performed by the court after verdict or finding of guilt, his successor in office or any other judge presiding in or assigned to the court may sentence the accused and perform such acts and duties; but if such other judge is not satisfied that he can properly sentence the accused or perform such acts and duties, he may in his discretion grant a new trial.
(Uniform Rule 36.)

Rule 750. Witness—Expert.

The court may order the parties to show cause why an expert witness should not be appointed and may request the parties to submit nominations. The court may appoint an expert witness agreed upon by the parties and may appoint an expert witness of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by a party. If called by the court, he shall be subject to cross examination by each party. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. This Rule shall not limit the parties in calling expert witnesses of their own selection and at their own expense.
(Uniform Rule 37.)

Note. — THIS RULE IS SUBMITTED FOR THE SPECIAL CONSIDERATION AND COMMENT OF THE BENCH AND BAR. THE COMMITTEE DOES NOT AT THIS TIME MAKE ANY RECOMMENDATION ON IT.

Rule 753. Witness—Exclusion.

The court may upon its own motion and shall, upon the request of a party, order that the witnesses be excluded from the courtroom until called upon to testify. An expert witness, who is to render an opinion based on the testimony given at the trial, shall be excepted from the operation of this Rule upon the request of the party by whom he was called.
(Rule 737, and Proposed.)

Rule 755. Motion for Judgment of Acquittal.

a. *Supersedes Motion for Directed Verdict.*

The motion for a directed verdict of not guilty and the motion for an instruction that the evidence is insufficient in law to sustain a conviction are abolished and the motion for judgment of acquittal shall be used in their place.
(Rule 738, and Uniform Rule 38.)

b. *When Made.*

A motion for judgment of acquittal on one or more counts, or one or more degrees of an offense, may be made by an accused at the close of the evidence offered by the State, or may be made at the close of all the evidence, whether or not such motion was made at the close of the evidence offered by the State. If the motion is not granted at the close of the evidence offered by the State, the accused may offer evidence without having reserved the right to do so, but by so doing, he withdraws his motion.
(Uniform Rule 38 and Rule 738.)

c. *Action by Court.*

If the court on such motion or on its own motion determines that a judgment of acquittal should be granted, it shall direct the clerk to enter a judgment of acquittal on one or more counts, or one or more degrees of an offense which by law may be divided into degrees, and to note that it has been entered by the direction of the court. If the case is tried before a jury it shall not be necessary for the jury by its foreman, or otherwise, to render a verdict.
(Proposed; cf. Rule 738.)

Rule 756. Advisory Instructions.

a. *Request for—Written—Copies.*

At the close of the evidence, the State and any defendant may file with the court written requests that the court instruct the jury as set forth in such requests, and shall furnish to all other parties copies thereof.
(Rule 739 a.)

b. *How Given.*

The court may and at the request of any party shall, grant such advisory instructions to the jury as may correctly state the applicable law; the court may give its instructions either orally or in writing. The court need not grant any requested instruction if the matter is fairly covered by the instructions actually given. The court shall in every case in which instructions are given to the jury, instruct the jury that they are the final judges of the law and that the court's instructions are advisory only.
(Rule 739 b.)

c. *Summation or Reference to Evidence.*

In giving any advisory instructions under section b of this Rule, the court may make such summation of or reference to the evidence as may be appropriate in order to present clearly to the jury the issue to be decided by them; provided the court instructs the jury that they are the final judges of the facts and that it is for them to determine the weight of the evidence and the credit to be given to the witnesses.
(Rule 739 c.)

d. *Ruling on Request for Instructions.*

Where the court's charge is not delivered until after the argument of counsel to the jury, the court shall, in advance of such argument, advise counsel of its

proposed action on the request for instructions and the substance of the instructions which its proposes to give.
(Rule 739 d.)

e. *When Instructions Given.*

The court may give its instructions at any time after the close of the evidence. The giving of such instructions prior to the argument of counsel shall not preclude counsel from arguing to the contrary.
(Rule 739 e.)

f. *Objection.*

If a party has an objection to any portion of any instruction given, or to any omission therefrom, or to the failure to give any instruction, he shall before the jury retires to consider its verdict make such objection stating distinctly the portion, or omission, or failure to instruct to which he objects and the ground of his objection. Opportunity shall be given to make the objection in open court out of the hearing of the jury upon application either orally or in writing, made before or after the conclusion of the charge.

g. *Appeal.*

Upon appeal a party assigning error in the instructions may not assign as of right an error unless (1) the particular portion of the instructions given or the particular omission therefrom or the particular failure to instruct was distinctly objected to before the jury retired to consider its verdict and (2) the grounds of objection were stated at that time. Ordinarily no other error will be considered by the Court of Appeals, but the Court of Appeals either of its own motion or upon the suggestion of a party may take cognizance of and correct any plain error in the instructions, material to the rights of the accused even though such error was not objected to as provided by section f of this Rule.
(Rule 739 g.)

Rule 757. Jury Room—What Taken to.

The provisions of Rule 558 (Jury Room—What May Be Taken to) shall apply to a criminal case.
(Proposed.)

Rule 758. Verdict.

a. *Return.*

The verdict shall be unanimous, and shall be returned by the jury in open court.
(Uniform Rule 40 b.)

b. *Sealed Verdict.*

1. When Permissible.

With the consent of both parties, the court may authorize the rendition of a sealed verdict during a temporary adjournment of court.
(Proposed.)

2. How Made.

A sealed verdict shall be in writing and shall be signed by each member of the jury. It shall be sealed in an envelope by the foreman of the jury who shall write on the outside of the envelope "Verdict in Case No. ....." (giving the number of the case) "State of Maryland vs. ....." (giving the name of the defendant). The foreman shall deliver said envelope to the clerk. The jury shall not be discharged, but the clerk shall permit the jury to disperse until the court is again in session at which time the jury shall be called and the verdict opened and received as other verdicts.
(Proposed.)

c. *Two or More Defendants.*

If there are two or more defendants, the jury at any time may return a verdict with respect to a defendant as to whom it has agreed; if the jury cannot agree with respect to a defendant the defendant as to whom it does not agree may be tried again.
(Uniform Rule 40 c.)

d. *Poll of Jury.*

When a verdict is returned and before the jury is discharged it shall be polled at the request of a party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.
(Uniform Rule 40 d.)

e. *Recommendation of Mercy.*

A jury may attach to its verdict a recommendation to the court to show mercy to an accused. Such recommendation shall not be binding upon the court.

Cross reference. — For cases involving murder in the first degree, rape, assault with intent to rape and carnal knowledge of child under fourteen or of insane, etc., woman, see the provisions of Code article 27, §§ 12, 413 and 463, which are controlling as to the verdict and sentence.

Rule 759. Motions After Verdict.

a. *Motion for New Trial.*

A motion for a new trial shall be made pursuant to Rule 567 (New Trial). A motion for a new trial shall be heard by the court in which the motion is pending, except that in the case of a motion for a new trial pending in the Criminal Court of Baltimore, such motion shall be heard by the Supreme Bench of Baltimore City. The court may grant a new trial if required in the interest of justice.
(Proposed.)

b. *Motion in Arrest of Judgment.*

Upon motion of a party or on its own motion the court shall arrest judgment only for an error apparent on the face of the record, and which could not have been reached by motion to dismiss or grant appropriate relief before or during the trial. A motion in arrest of judgment shall be made within three days after determination of guilt.
(Uniform Rule 41 b.)

Rule 761. Sentence—Presentence Investigation.

a. *Sentence.*

Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford an accused or his counsel an opportunity to make a statement and to present information in mitigation of punishment.
(Uniform Rule 42.)

b. *Sentence upon a Corporation.*

If a corporation is convicted of an offense, the court may cause its judgment to be enforced in the same manner as a judgment in a civil action.
(Uniform Rule 42 c.)

c. *Presentence Investigation.*

The court may order such person or organization as it may direct to make a presentence investigation and report to the court before the imposition of

sentence or granting of probation. The report shall be in such form and with such contents as the court may direct.
(Uniform Rule 42 d.)

Rule 763. Commitment—Record.

a. *Content.*

Whenever a person shall be convicted of an offense and sentenced to imprisonment the clerk shall deliver, to the sheriff or other qualified officer in whose custody the defendant has been placed, a commitment record containing

(1) The name of the defendant and the docket reference of the case;
(2) The name of the judge presiding at the trial;
(3) The name of the offense for which sentenced, specifying, if any, the count or counts in the indictment;
(4) The sentence, specifying counts if any, the date of imposition thereof and the date of commencement thereof if different from the date of imposition;
(5) Whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence.

b. *Delivery.*

The sheriff or other qualified officer shall forthwith deliver the defendant with the commitment record to the warden or other person in charge of the institution to which the defendant has been sentenced.

c. *Effect of Error.*

An error in the commitment record or other failure to comply with this Rule shall not constitute ground for invalidity of imprisonment after conviction.
(Cf. art. 27, § 698.)

Cross reference.—See also, Wain v. Warden, 215 Md. 650, 138 A. (2d) 482.

Rule 764. Revisory Power of Court.

a. *Illegal Sentence.*

The court may correct an illegal sentence at any time.
(Rule 744 a.)

b. *Modification or Reduction—Time for.*

For a period of ninety (90) days after the imposition of a sentence, or within ninety (90) days after receipt by the court of a mandate issued by the Court of Appeals upon affirmance of the judgment or dismissal of appeal, or thereafter, pursuant to motion filed within such period, the court shall have revisory power and control over the judgment or other judicial act forming a part of the proceedings. The court may, pursuant to this section, modify or reduce, but shall not increase the length of a sentence. After the expiration of such period, the court shall have such revisory power and control only in case of fraud, mistake or irregularity.
(Rule 744 c; Proposed.)

c. *Bastardy, Desertion and Non-Support Cases.*

Notwithstanding the provisions of section b of this Rule, the court in a case involving bastardy, desertion, and non-support of wife, children or destitute parents, may at any time before expiration of sentence, reduce, change or modify or suspend the sentence or place the accused upon probation upon such conditions and terms as the court may impose.
(Rule 744 b.)

Rule 765. Correction of Clerical Mistake.

A clerical mistake in the record and error in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order. If an appeal has been taken such mistake may be so corrected until the record has been filed in the Court of Appeals and thereafter while the appeal is pending may be corrected pursuant to Rule 827 (Correction of Error or Omission in Record).
(Uniform Rule 45.)

Rule 772. Appeal.

The provisions of Chapter 800 (Appeals to the Court of Appeals) shall govern an appeal in a criminal case to the extent that the provisions therein are not inconsistent with the Rules in this Chapter.
(Proposed.)

Cross references.—For time for appeal, see Rule 812. For number of copies of transcript, see Rule 826 c 2. For advancement of case, see Rule 845 c. For removal in criminal case, see Rule 871. For waiver of costs and indigent defendants, see Rule 883.

Rule 775. Presence of Accused.

The accused shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as provided in this Rule. The accused shall have the right to be present at the taking of a deposition taken at the instance of the prosecution. In a prosecution for an offense not punishable by death the defendant's voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. The defendant's presence is not required at a reduction of sentence under Rule 764 (Revisory Power of Court), fixing of the date of execution in a capital case, or at a proceeding in an appellate court.
(Uniform Rule 49.)

Cross reference.—See also section b of Rule 727 (Deposition).

Rule 777. Bail.

a. *Prior to Conviction.*

Prior to conviction an accused who is charged with an offense the maximum punishment for which is other than capital shall be entitled to be admitted to bail. In a capital case the accused may be admitted to bail in the discretion of the court.

b. *After Conviction—Pending Sentence or Appeal.*

After conviction, pending sentence or appeal, of an offense the maximum punishment for which is other than capital or confinement in the penitentiary, an accused shall be entitled to be admitted to bail. In all other cases the accused may be admitted to bail in the discretion of the court.

c. *Amount of Bail After Conviction.*

The court may require greater bail after conviction pending sentence or appeal than the accused had given before conviction.

d. *Refusal or Failure of Bail Pending Appeal—Effect.*

Pending appeal, if the court in its discretion refuses to admit the accused to

bail or the accused does not furnish bail, the accused shall commence service of his sentence.

Cross reference.—For deposit in lieu of bond, see Rules H1-H8 (Bond).

Committee note.—The word "court" as used in sections a to d of this Rule, means the trial court. See definition of "court", Rule 5 i.

e. *Review in the Supreme Court of the United States.*

After an accused has filed an application for review in the Supreme Court of the United States of a decision of the Court of Appeals of Maryland affirming the judgment of the trial court, he may be admitted to bail in the discretion of the trial court.

f. *Transfer of Record to Court Considering Application.*

When an application for bail is made while the record is in the custody of the Court of Appeals, whether before or after the mandate of the Court of Appeals has issued, the Clerk of the Court of Appeals shall upon request return the record to the clerk of the court to which the application has been made for use in consideration of the application.
(Proposed.)

Rule 781. Fines—Stay.

Where the sentence is to pay a fine, execution thereof may be stayed pending appeal pursuant to Rule 817 (Stay of Execution of Final Judgment in Civil Cases).
(Proposed.)

Chapter 900.

Juvenile Causes.

RULES 901-999

Rule 901. Venue.

A petition in a juvenile proceeding shall be filed in the court having jurisdiction in juvenile causes in the county in which the cause arises.

Cross references.—Jurisdiction in juvenile causes—Statewide: Article 26, §§ 52, 53, 54 (to age 18); Baltimore City: Charter & P. L. L. of Baltimore City (Flack, 1949), §§ 240-242 (to age 16). It should be noted that the juvenile court does not have jurisdiction over motor vehicle law violations, except in certain specified instances— Code, article 26, § 54.

For general jurisdiction of equity in custody and guardianship cases, see Code, article 16, § 66.

Committee note.—Except in Allegany, Montgomery and Washington counties, the circuit courts have jurisdiction in juvenile causes—Code, Art. 26, §§ 51, 71. In Baltimore City, the Circuit Court of Baltimore City has such jurisdiction—Charter & P. L. L. of Baltimore City (Flack, 1949), § 239. In Allegany and Washington counties, juvenile jurisdiction is vested in a magistrate for juvenile causes—P. L. L. of Allegany County (Everstine, 1955), § 284, P. L. L. of Maryland (1930), Art. 22, § 558. In Montgomery County, one of the People's Court judges is designated a judge for juvenile causes only—Code, Art. 26, § 72. This Chapter is not applicable to juvenile proceedings brought before such magistrates or People's Court judges. Where a court ordinarily or by statute refers a juvenile proceeding to a master, the authority of the master and the procedure before him may be controlled by local rule.

Rule 902. Petition—Who May File.

Any person having knowledge of the facts, or the State's attorney, may file a petition in a juvenile proceeding.

Rule 903. Petition—Form and Content.

a. *Titling.*

The petition shall be titled "Matter of .....".

b. *Content.*

The petition shall be in writing, signed by the petitioner, and shall contain the following information:

1. Name, Age, etc.

The name, age, sex, race and residence of the respondent, and the names and residence of the parents, guardian, or other person having custody and control of an infant respondent. If the petitioner shall not know any of the information required above, he shall so state.

2. Status of Petitioner.

The relationship or concern of the petitioner in the matter.

3. Jurisdictional Allegation.

The statutory classification of the act or condition causing the respondent to come under the jurisdiction of the court.

Cross references.—For specific statutory *classifications of acts or conditions bringing the respondent under the jurisdiction of the court,* see Code, article 26, §§ 53 and 54; Charter & P. L. L. of Baltimore City (Flack, 1949), §§ 241 and 242.

4. Facts.

A statement, in simple and non-technical language of the facts on which the action is based.

c. *Copies.*

The petition shall be filed in triplicate; only the original need be signed.

d. *List of Witnesses.*

With the petition the petitioner shall file a list of names and the specific address of each witness to be summoned in support of the petition.

Rule 904. Immediate Custody.

a. *Process.*

The court may issue process authorizing the apprehension and detention of a respondent pending hearing and disposition, whenever it deems such action necessary. Such action may be taken upon the court's own motion, either with or without a hearing.

b. *Service.*

When a minor is taken into custody pursuant to section a of this Rule, the parent, guardian or other person having custody of such minor shall be immediately notified of such apprehension and detention, pursuant to section c of Rule 905 (Duties of Clerk—Hearing, Summons, etc.).

Rule 905. Duties of Clerk.

a. *Separate Docket.*

The clerk shall keep a separate docket of juvenile proceedings, upon the filing of a petition under this Chapter, he shall enter the name of each respondent in such proceeding on such docket, together with the appropriate docket entries for each.

b. *Time of Hearing.*

Promptly after the filing of a petition, the clerk or his designate shall set the time and place of the hearing before the judge or master, as the case may be.

c. *Process.*

1. Summons—Other Notice.

(a) Issuance.

The clerk shall thereupon issue as of course a summons for each respondent, which shall be served, together with a copy of the petition, pursuant to Rule 104 (Service of Process—Generally). In addition, if the respondent is a minor, a copy of the summons and of the petition shall be served as promptly as possible upon the resident parent, guardian or other person having custody of the minor, if any, pursuant to Rule 104 (Service of Process—Generally). If such parent, guardian or other person having custody of the minor is not a resident, or for any reason cannot be served, then notice of the pendency and nature of the proceeding shall be given to him by such method as the court may direct, and proof of the steps taken to give such notice shall be filed in the proceedings.

(b) Delay in Service or Notice.

Delay in effecting service upon, or in giving notice to, the parent, guardian or other person having custody of a minor respondent, pursuant to paragraph (a), shall not prevent the court from taking such action pending service or notice as justice shall require.

Committee note.—The provision for notice instead of service, as provided in (a), together with the right of the court to take such interim action as shall be in the welfare of the minor, in the event service or notification cannot be effected, finds support in DeWitt v. Brooks, 182 S. W. (2d) 687 (Sup. Ct. of Tex.). This case points out the need for immediate action in the child's welfare, and that it is generally held that a statute authorizing such summary proceedings without notice to the parents is constitutional, and that a decree in accordance therewith is valid, "subject only to the right of the parents or guardian who were without notice to a full hearing in a subsequent proceeding on the issue as to whether the child was, in fact, a dependent or neglected child." Code, Art. 26, § 64, would seem to give such provisions the force of statute.

2. Content.

The summons shall give notice of the time and place of hearing, and if addressed to or served on a parent, guardian or other person having custody of a juvenile respondent, may also require him to produce such respondent at the time and place named.

3. Service—Local Rules—Police.

In addition to the persons authorized to serve original process by the Maryland Rules, the court may also designate other officers of the court, or members of the Maryland State Police or of the local police to serve original process in juvenile proceedings.

d. *Summons for Witness.*

The clerk shall also thereupon issue as of course a summons for each witness named by the petitioner, pursuant to Rule 114 (Witness—Summons for).

Rule 907. Preliminary Investigation.

Upon the filing of a petition, pursuant to Rule 902 (Petition—Who May File), the court may conduct, or cause to be conducted, such investigation as it may deem necessary.

Cross reference.—For investigation by probation officer, see Code, article 26, § 55.

Committee note.—Rule 907 was proposed to make it clear that the court may cause an investigation to be made prior to the hearing, if the circumstances so warrant.

Rule 909. Answer.

A written answer or other pleading may be filed in any proceeding. A respondent eighteen years of age or over (sixteen years of age or over in Baltimore

City) proceeded against pursuant to the court's original jurisdiction shall be required to proceed as in an ordinary criminal cause, pursuant to Rules 720 (Plea) and 721 (Refusal to Plead or to Accept Guilty Plea).

Explanatory note.—The reference to the Rules are to the proposed criminal rules, the source of which is current Rule 724 (Pleas).

Rule 910. Adult—Right to Trial According to Usual Criminal Procedure.

A respondent eighteen years of age or over (sixteen years of age or over in Baltimore City) proceeded against pursuant to the court's original jurisdiction shall before trial be informed of his right to demand trial according to the usual criminal procedure. If he shall demand such trial, the court shall notify the State's attorney, and further proceedings shall be had according to the usual criminal procedure.

Cross references.—For right of trial by jury, and according to the usual criminal procedure, see Code, article 26, § 55, and Charter & P. L. L. of Baltimore City (Flack, 1949), §§ 242, 243. See also proposed Rule 705 (Juvenile Causes—Waiver of Jurisdiction).

A juvenile proceeding is not a criminal proceeding — Commonwealth v. Warren, 204 Md. 467, 105 A. (2d) 488; Moquin v. State, 216 Md. 524, 140 A. (2d) 914.

Rule 911. Waiver of Jurisdiction by Court.

If, after such investigation as the court may deem necessary it shall waive jurisdiction in any juvenile proceeding, the waiver shall be noted on the docket, and the court shall order the respondent held for action under the usual criminal procedure. The clerk shall deliver a certificate of the waiver to the State's attorney.

Cross references.—For the right of the juvenile court to waive jurisdiction, see Code, article 26, § 54; Charter & P. L. L. of Baltimore City (Flack, 1949), § 242. For procedure where juvenile court jurisdiction waived, see Rule 705 (Juvenile Causes—Waiver of Jurisdiction).

Rule 912. Security for Appearance.

The court may require security for the appearance of any person within the court's jurisdiction, in such form and amount as the court may from time to time determine to be necessary. The court may also require such security for the appearance of a person in the criminal court when the court has waived jurisdiction as to such person so that he may be dealt with according to the usual criminal procedure.

Rule 915. Conduct of Hearing.

a. *Statement of Charge.*

The substance of the petition shall be stated to the respondent before the hearing and the clerk shall enter a general denial on behalf of any person under the age of eighteen years (under the age of sixteen years in Baltimore City) in each case in which no written answer is filed in his behalf.

b. *Informal.*

A cause concerning a person under the age of eighteen years (under the age of sixteen years in Baltimore City) may be heard separately from a cause concerning an adult, and may be heard in chambers or elsewhere, where facilities are available. The hearing shall be conducted in an informal manner and not as a criminal trial, and may be adjourned from time to time. The hearing may be

conducted out of the presence of all persons except those whose presence is necessary or desirable.

c. *Individual Hearings.*

A respondent may receive an individual hearing even though the delinquent conduct alleged may have been performed in association with others.

d. *Consolidation.*

If two or more petitions are filed against a respondent, or if petitions are filed against two or more respondents arising out of the same incident or condition, hearing of the several petitions may be consolidated and a single disposition made of the combined actions. Nothing in this section shall prevent the court from subsequently severing consolidated actions when justice so requires.

e. *Stenographic Notes.*

A stenographic or other recording of the hearing shall not be required unless the court so orders. If the respondent, or the parent, guardian or attorney of an infant respondent requests the presence of a reporter at the hearing, then such reporter shall be provided upon such terms as to the payment of the costs thereof as justice may require.

Cross reference.—See Jefferson v. State, 218 Md. 397, 147 A. (2d) 204 where neither State nor respondent had requested a stenographic transcript of the record and there was none.

Rule 917. Disposition of Case.

The disposition of the case shall be entered on the docket by the clerk. Each commitment shall be made subject to the further order of the court. If the court shall dismiss the petition because the charge is not sustained by the evidence, the docket shall specifically so state.

Rule 919. Progress Reports.

In every case where a respondent under the age of eighteen years (under the age of sixteen years in Baltimore City) is committed to any public or private institution or agency, the court may require from such institution or agency a written report of progress, with recommendations for further care or treatment, at least once every six months from the date of commitment.

Rule 922. Records—When May Be Examined.

A person having a direct interest in a case may examine any part of the record thereof, except medical and case histories and other reports which the court may designate confidential. Such person may also examine such histories and confidential reports with prior written permission of the court. The court may, however, from time to time, designate by general orders persons or agencies who may inspect any record, or specific classes of records, without additional written permission. Except as provided herein, no other person may examine any juvenile record, including the docket, without prior written permission of the court.

Rule 923. Disposition of Property Brought into Court.

Property brought into court shall be returned to the owner or otherwise disposed of as the court may direct.

PART III

Proposed Additions to Chapters on Special Proceedings

Chapter 1100.

Special Proceedings.

SUBTITLES A TO Z AND BA TO BZ

SUBTITLE A. ABSENT PERSONS

Rule A1. Procedure.

The procedure for obtaining a judgment declaring the property interest of an absent person terminated because of his absence shall be pursuant to Code, Article 16, Sections 200 to 212 (Uniform Absence as Evidence of Death and Absentee's Property Act).

Cross reference.—For administration of estates of persons found to be dead pursuant to the Uniform Absence as Evidence of Death and Absentees' Property Act, see Code, article 93, § 259.

Committee note. — Sec. f of Rule 1379 (V78) (Absent or Unknown Beneficiary —Distribution Under Court Order) provides that the remedies provided in Rule 1379 (V78) are additional to and not in substitution for any other existing remedy and therefore eliminates any conflict between Code, Article 16, Secs. 200-212 (Uniform Absence as Evidence of Death and Absentees' Property Act) and Rule 1379 (V78) (Absentee or Unknown Beneficiary—Distribution Under Court Order).

SUBTITLE B. ADMINISTRATIVE AGENCIES—APPEAL FROM

(1958 Md. Rule 1101)

(1958 MD. RULE 1101)

SUBTITLE C. (Reserved)

SUBTITLE D. ADOPTION

(1958 Md. Rules 1170-1181)

(1958 MD. RULES 1170-1181)

SUBTITLE E. ARBITRATION AND AWARD

Rule E1. Submission.

If all parties to any pending action, either at law or in equity, other than an appeal from an administrative body, file a written request prior to trial that such action or any issue thereof be referred to arbitration for decision, the court shall order such action or issue referred to arbitration pursuant to Rules E2 to E5, inclusive.

Cross references. — See the following Code provisions relating to arbitration: Article 23, § 260—arbitration of contested elections in churches, societies or congregations. Article 25, § 45—arbitration of disputes as to portion of cost of bridges to be borne by adjoining counties. Article 48, § 43—arbitration of disputes as to tobacco samples. Article 81, §§ 177-189—"Uniform Act on Interstate Arbitration of Death Taxes". Article 93, §§ 282-284—arbitration of claims against personal representatives by Orphans' Court.

Subcommittee explanatory note. — The existing Code provisions on arbitration and award (Article 7 and Article 75, Secs. 16-21) are applicable only to the arbitration of pending law actions and actions involving labor disputes, which by agreement of all parties, may be submitted to arbitration for decision. The cited statutes provide that in such cases the award of the arbitrators may be entered as a judgment and will have the same effect as any other judgment entered by the court. Poe, Vol. II, Section 138, states that the object of Article 75, Secs. 16-21 "was to enable the parties to any existing law suit to submit their contention to the arbitration and award of some mutually selected referee or referees, in place of the tribunals of the State, and to give power to the courts to enter judgments, and to issue execution upon such judgments, upon the awards of such arbitrators, precisely as if the case had been regularly tried and decided according to the ordinary course of law".

Insofar as the subcommittee has been able to determine these Code provisions are very seldom utilized in modern practice. Almost all of the present cases involve arbitration of existing disputes by agreement of the parties or pursuant to arbitration clauses in contracts. These cases seldom reach the courts unless one of the parties seeks to upset the award or unless suit is brought involving the same subject matter as that referred to arbitration. The result of the Maryland decisions involving private arbitration proceeds is that an agreement to arbitrate, which has not been consummated by an award, is not a bar to suit with respect to the issues agreed to be arbitrated (Tomlinson v. Dille, 147 Md. 161, 127 A. 746); however, once the award is made, assuming the arbitration to have been validly conducted, it is conclusive on the parties and will be enforced by the courts. Parr Construction Co. v. Pomer, 217 Md. 539, 144 A. (2d) 69. There is one exception to the general rule that an executory agreement to arbitrate will not be enforced, viz.: an agreement for settlement of an incidental matter, or a matter involving preliminary determination of amounts, values, quantities or the like, by appraisers, if made a condition precedent to suit, will be enforced so long as the preliminary determination does not involve the "ultimate rights" of the parties. Eisel v. Howell, The Daily Record, 12/2/59.

Unlike Maryland, many other jurisdictions have by statute attempted to validate private arbitration agreements and to permit what amounts to "specific performance" of such agreements by granting the right to compel arbitration by court order and to stay litigation involving the same subject matter as that referable to arbitration. See for example: 9 U. S. Code, Secs. 1-14; Purdon's Pennsylvania Statutes, Title 5; N. Y. Civil Practice Act, Article 84, Sections 1448-1469; N. J. Statutes Ann., Title 2A, Chapter 24, Sec. 2A:-24-1 et seq.

A "Uniform Arbitration Act" has also been adopted by the Conference of Commissioners on Uniform State Laws. Although the Act has been enacted as such in only one state, the Commissioners' Prefatory Note to the Act states that it is

based on the provisions of arbitration statutes already in effect in New York and approximately fifteen other states.

In the drafting of these rules, the subcommittee has attempted to accomplish two objectives: First, it has sought to provide a comprehensive series of procedural rules relating to arbitration of existing cases by consent of the parties. The present statutory provisions are relatively meager and in some instances outmoded; consequently, instead of attempting to codify the existing Code provisions, the subcommittee has borrowed freely from the arbitration procedures contained in statutes in force in other states and especially from the Uniform Act. Secondly, an effort has been made to judicially "recognize" private arbitration awards to the extent that a procedure is provided for their enforcement by the entry of judgment on a private award. In view of the present dearth of substantive statutory or common law recognition in Maryland of private arbitration agreements, the subcommittee concluded that the most the Rules could accomplish at this time was to aid in the enforcement of such agreements by providing a relatively simple procedure for entering judgment once the arbitration had been consummated by an award.

The subcommittee recognizes that the rules cannot be more extensive in scope insofar as private agreements to arbitrate are concerned in view of the absence of Maryland statutory or case law validating or enforcing such agreements except to the extremely limited extent noted above. Since the use of arbitration provisions in agreements is becoming increasingly widespread, the subcommittee feels that the Committee might in connection with its consideration of the Rule also consider recommending a legislative enactment similar to the "substantive" provisions of the Uniform Act or of the comparable arbitration acts which have been adopted in other states.

Committee note.—This follows substantially Article 75, Section 16 (which applies generally to the arbitration of pending actions) and Article 7, Sections 1-2 (which deal with labor-management disputes only) except that the latter sections also provide for arbitration by order of a justice of the peace. Article 75, Section 16 has been held to be applicable only to cases at law. Phillips v. Shipley, 1 Bland 156. The Rule has been extended to cover pending equity actions as well. Although the present statutes do not expressly limit the time within which the right to refer to arbitration can be exercised, the limitation to the commencement of trial is implicit under the existing Code provisions. Poe, Section 138, states that the suit may be instituted by agreeement for the express purpose of securing arbitration.

Rule E2. Arbitrators.

a. *Appointment.*

The court's order of reference shall designate one or more arbitrators. The court may, in its discretion, designate an even number of arbitrators with provision for an additional arbitrator to be selected prior to the hearing by the arbitrators so designated.

b. *Action—By Majority.*

If there are three or more arbitrators, all powers may be exercised and all decisions may be rendered by a majority of the arbitrators unless otherwise provided by the court or by these Rules.

Cross reference.—See § d 1 of Rule E3 (Hearing) which requires all arbitrators to attend each session of the hearing, but provides for majority action unless otherwise provided in the order of reference.

c. *Failure to Act.*

If an arbitrator shall fail or cease to act, the remaining arbitrators may continue with the hearing and determination of the controversy, provided however that the court may, upon motion of any party and notice and opportunity for hearing to all parties, appoint a substitute arbitrator who shall have the same power to act as if originally designated.

Explanatory note. — *Section a* — represents the existing Maryland practice. Poe, Sections 139-140. Poe states that it is better practice where only two arbitrators are selected to provide in the order for the selection of a third before the hearing.

Section b—follows Section 4 of the Uniform Act. It has been held in Maryland that, unless otherwise provided in the submission to arbitration, the award must be unanimous. Harryman v. Harryman, 43 Md. 140. Poe, Section 140, states that the better practice is to always provide in the order for a majority decision. The proposed rule of course eliminates the necessity of so providing.

Section c—represents a compromise between Article 75, Section 14 (which provides that if any arbitrator dies or refuses to act, the court shall, on motion of any party, appoint a substitute) and Section 5 (c) of the Uniform Act (which provides that wherever an arbitrator ceases to act, the remaining arbitrators may continue the hearing and render an award).

Rule E3. Hearing.

a. *Time and Place.*

The arbitrators shall fix a time and place for the hearing and cause written notice thereof to be delivered personally or by registered mail to the parties not less than five days before the hearing, unless the parties by mutual agreement waive such notice or shorten the time. A party shall be deemed to have waived such notice by appearance at the hearing.

Explanatory note.—This follows subsection 5 (a) of the Uniform Act except that the provision for waiving notice by agreement or shortening the time has been inserted. There is no comparable Code provision in Maryland, but the cases have held that arbitrators must give the parties notice of the time and place of the hearing and that failure to notify a party makes the award invalid as to such party. Wilson v. Boor, 40 Md. 483; Young v. Reynolds, 4 Md. 375.

b. *Rights of Party—Representation.*

Each party shall be entitled to be represented by counsel, to present evidence and to cross-examine witnesses. Each party shall have the right to be present at any hearing where evidence is introduced.

Explanatory note. — This is patterned after subsection 5 (b) and Section 6 of the Uniform Act. Although there are no similar provisions in the Maryland Code, the practice is the same. Poe, Section 143. The final sentence is intended to codify the holding in Roloson v. Carson, 8 Md. 208 to the effect that an award is not defective where the parties were not present at, nor given notice of, the final meeting of the arbitrators, the sole purpose of which was to make up and sign the award.

c. *Witnesses—Evidence.*

1. Summons.

The clerk shall, upon request of a party, issue a summons for a witness to appear before the arbitrators pursuant to Rule 114 (Witness—Summons for) or Rule 115 (Summons Duces Tecum).

2. Oath.

The arbitrators shall have the power to administer oaths.

Explanatory note. — The provisions of this Section are based generally upon Section 7 of the Uniform Act. The Code is silent as to the power of the arbitrators to summons and administer oaths to witnesses. Poe, Section 143, states that it is usual to provide in the order of reference that the arbitrators shall have power to cause witnesses to be summoned and to swear them in. However, he regards as serious defects in the law the fact that "there is no provision for compelling the attendance of witnesses, nor for punishing them for contempt; nor can a witness who does attend and give false testimony be prosecuted for perjury".

d. *Arbitrators—Conduct of Hearing.*

1. Attendance Required.

All the arbitrators shall personally attend each session but, unless otherwise provided in the order of reference, a majority may determine any question and render a final award.

2. Adjournment—Postponement.

The arbitrators may adjourn the hearing from time to time as necessary and

for good cause shown may, on request of a party or on their own motion, postpone the hearing to a time not later than the date, if any, fixed by the court for the making of the award, unless the parties consent to a later date.

Cross reference.—See Rule E4 a (Award —When Made).

3. Failure of Party to Appear.

The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear.

Explanatory note. — See subsections 5 (a) and 5 (c) of the Uniform Act. There are no similar statutory provisions in Maryland. However, the Maryland cases are consistent with subsection 1 in holding that arbitrators have no power to delegate any of their duties. Frankfort Distilleries v. Burns Bottling Mach. Works, 174 Md. 12, 197 A. 599; Archer v. Williamson, 2 Har. & G. 62.

Rule E4. Award.

a. *When Made.*

An award shall be made within the time fixed by the court, unless extended in writing by agreement of all parties. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the making of the award.

Explanatory note.—See Section 8 (b) of the Uniform Act. Article 75, Section 20, provides that if an award is not returned within eight months after the referral, the court may compel the arbitrators to make an award or give their reason for not doing so, or upon motion of a party, reinstate the cause for trial.

b. *Form.*

An award shall be in writing and signed by the arbitrators joining therein. The arbitrators shall file the original of the award in court and serve a copy on each party pursuant to section c of Rule 306 (Service of Pleading or Notice).

Explanatory note.—See Section 8 (a) of the Uniform Act. Article 75, Section 21, now provides that the prevailing party shall cause a copy of the award to be delivered to the adverse party at least three days before judgment.

c. *Costs and Expenses of Arbitration.*

Unless otherwise ordered by the court the fees and expenses of arbitration shall be paid as provided in the award and shall upon request of any party be included as court costs pursuant to Rule 604 (Costs).

Explanatory note.—Compare Section 10 of the Uniform Act. There is no corresponding statutory provision in Maryland, but Poe, Section 166, states that the charge is ordinarily fixed by the arbitrators and they can retain the award until it is paid.

d. *Revisory Power of Arbitrators.*

For a period of ten days after the filing of the award in court, the arbitrators shall have revisory power and control over the award. Any modification of the award shall be signed, filed in court, and served on the parties as provided in section b of this Rule.

Explanatory note.—Cf. Rule 625 (Revisory Power of Court over Final Judgment), and Section 9 of the Uniform Act which limits the arbitrators' revisory power to modifications or corrections for grounds listed in (1) or (3) of Section g *infra* or for the purpose of clarification. No Maryland case law as been found on this point.

e. *Award—When Final.*

Upon the expiration of twenty days from the filing of the award in court, or such other time as the court may order, the award shall be final unless within

such time a petition has been filed to vacate, modify or correct the award pursuant to sections f or g of this Rule.

Explanatory note.—Compare Section 11 of the Uniform Act. The present Maryland practice under Article 75, Section 21, is for judgment to be entered on the award at least three days after a copy of the award has been delivered to the adverse party provided the prevailing party furnishes proof of such delivery.

f. *Vacating Award.*

1. Grounds.

Upon petition filed by a party and after such hearing and notice to all parties as the court may determine, an award may be vacated only where the court finds that—

(a) The award was procured by fraud, corruption or other improper means;

(b) The arbitrators exceeded their powers; or

(c) The arbitrators failed to give proper notice of the hearing or to hear material evidence or otherwise wrongfully conducted the hearing so as to prejudice substantially the rights of a party.

2. Failure to Follow Legal Rules.

The mere fact that the arbitrators did not apply the rules of evidence, or that relief was such that it could not or would not be granted by a court is not ground for vacating the award.

Explanatory note. — *Subsec. 1* — The grounds listed are substantially identical with those listed in Section 12 of the Uniform Act. Article 75, Section 17, provides that the court may set aside an award where "the same was procured by fraud or malpractice in, or by surprise, imposition or deception of the arbitrators, or without due notice to the parties or their attorneys". However, the statutory grounds are not exclusive; the award may also be set aside for errors apparent upon its face, *e. g.*, if the award deals with matters which were not referred to arbitration unless such matters are separable. Bullock v. Bergman, 46 Md. 270. But the award cannot be set aside for disputed questions of fact. Witz v. Tregallas, 82 Md. 351, 369, 33 A. 718; Poe, Sections 154-155.

The provision to the effect that failure to observe the rules of evidence shall not be ground for upsetting the award is not in the Uniform Act. See Roberts v. Consumers' Can Co., 102 Md. 362, 370, 62 A. 585, where the court stated that: "Arbitrators are not governed by strict rules as to admissibility of evidence in force in courts of law. An attempt to require the application of those rules by lay arbitrators who cannot be expected to know them would often result in defeating the very purpose of the arbitration".

3. Subsequent Proceedings.

Upon vacating an award, the court may order a rehearing before the same or new arbitrators, or may reinstate the action for trial in the same manner as if it had not been referred to arbitration.

Explanatory note. — The Court of Appeals has held that the lower court has no power after setting aside an award to refer it back to the same arbitrators unless such power is given by the terms of the submission. Harryman v. Harryman, 43 Md. 140.

g. *Modification or Correction.*

Upon petition of a party, the court may with or without a hearing in its discretion modify or correct in an award:

(1) An evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) A decision upon a matter not submitted to the arbitrators where the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) Any error of form, not affecting the merits of the controversy.

Explanatory note.—The grounds specified are the same as those in Section 13 of the Uniform Act. Although no cases have been found involving the modifica-

tion or correction of an award rendered pursuant to arbitration under Article 75, the correction of an award as to a matter of form only has been sustained in a case involving arbitration pursuant to a private agreement. Continental Milling and Feed Co. v. Doughnut Corp. of America, 186 Md. 669, 48 A. (2d) 447.

Rule E5. Judgment.

After an award has become final, judgment shall be entered by the clerk and recorded in conformity therewith and may be enforced as any other judgment.

Cross references. — See Rules 619 (Recording of Judgment); 622 (Execution); 623 (Attachment on Judgment); 685 (Enforcement of Decree and Order).

Explanatory note.—The Maryland statutes now provide that the court "may give judgment on the award . . . and award execution thereon as upon verdict, confession or nonsuit". Article 75, Section 16; Article 7, Section 5.

Rule E6. Arbitration Out of Court.

a. *Right to Judgment.*

After a final award has been made in writing in an arbitration proceeding not conducted under Rules E1 to E5, inclusive, a party to the arbitration may have judgment entered on the award pursuant to this Rule.

b. *Application.*

1. Petition—Venue—Alternative Claim.

A petition for judgment on such an award shall be filed in a law court of the county where the arbitration hearing was held, or if such hearing was not held in this State, in the county where an adverse party resides, is regularly employed or maintains a place of business. The petition may include in the alternative a claim on the underlying cause of action covered by the award to be prosecuted in event the award is vacated by the court.

Committee note.—See Section c of this Rule with reference to the conditions under which the award can be vacated by the court. The grounds for vacating the award are the same as those set forth in Rule E4 f and g (which deals with the arbitration of a pending court action), with the exception that the award may also be vacated upon the additional ground that there was no valid arbitration agreement.

The second sentence of proposed subsection 1 of Section b above is intended to make it clear that the party seeking to enforce the award can protect himself against the possible bar of limitations in the event the award is vacated, by joining in the alternative a claim on the underlying cause of action with a claim for judgment on the award.

2. Exhibits.

The award and any written agreement pursuant to which the arbitration was conducted, or copies thereof shall be attached as exhibits to the petition.

3. Service.

The petition shall be served upon all other parties to the arbitration pursuant to Rule 104 (Service of Process—Generally) or Rule 105 (Process by Publication), whichever may apply.

c. *Award—Confirmation, Vacation, Modification.*

Any party may file, within the time permitted by Rule 307 (Time for Defendant's Initial Pleading), a motion to vacate, modify or correct the award upon one or more of the grounds set forth in sections f and g of Rule E4 (Award), or a motion to vacate the award upon the ground that there was no valid arbitration agreement. If no such motion is filed or if the court after hearing denies a motion to vacate the award the court shall confirm, modify or correct the award in accordance with the finding of the court.

d. *Judgment.*

Upon the entry of an order confirming, modifying or correcting the award, judgment shall be entered and recorded in conformity therewith and may be enforced as any other judgment.

(Art. 7; art. 75, §§ 16-21; Supreme Bench Rule 701.)

Explanatory note. — See similar provisions with respect to venue and exhibits in Sections 15 and 18 of the Uniform Act.

The present status of the Maryland decisions with respect to the enforceability of executory agreements to arbitrate is discussed in the subcommittee Explanatory Note following Rule E1.

There are no statutes in Maryland validating awards under private arbitration agreements or granting the right to "specifically enforce" such agreements by compelling arbitration or staying court action involving disputes referable to arbitration under private agreements. However, as early as 1698, a statute was enacted by Parliament (Statute of 9 and 10 Wm. III, C. 15, Alexander's British Statutes, Vol. II, p. 838) which permitted judgment to be entered upon an award made by arbitrators selected by private parties if the agreement to refer stipulated that it shall be made a "rule of court". This early English statute is in force in Maryland. Shriver v. State, 9 Gill and J. 1. Supreme Bench Rule 701 similarly provides that on motion a judgment or decree may be entered on a final award provided the award has remained in court for at least four days and a copy was served on the adverse party prior to such four-day period.

SUBTITLE F. ATTACHMENT ON JUDGMENT—PROCEDURE
(1958 Md. Rule 1139)

(1958 MD. RULE 1139)

SUBTITLE G. ATTACHMENT ON ORIGINAL PROCESS
(1958 Md. Rule 1140)

(1958 MD. RULE 1140)

SUBTITLE H. BOND

Rule H1. Scope.

Rules H1 to H8 are applicable to a bond required to be filed in any action.

Cross references.—The following rules contain other provisions applicable to judicial bonds:

Supersedeas Bond.

Rule 817 c (Stay of Execution of Final Judgment in Civil Cases—Where and When to Be Filed).

Rule 818 (Form and Penalty of Supersedeas Bond).

Rule 820 (Approval of Supersedeas Bond).

Rule 821 (Deposit in Lieu of Bond).

Attachments.

Rule 1140 c 5 [G42] (Documents to Be Filed — Bond—When Necessary — Amount).

Rule 1140 l 4 [G51] (Motion to Quash—Attachment Quashed—Stay by Filing Bond).

Rule 1140 s 3 [G58] (Claimant of Property Attached — Additional Security from Claimant).

Rule 1140 t 1 [G59] (Judgment of Condemnation — Execution — Bond Required).

Replevin.

Rule 1160 c [BQ42] (Replevin Bond).

Rule 1160 h [BQ47] (Retorno Habendo Bond).

Injunction.

Rule 1195 f [BB75] (Bond—When Required).

Judicial Sales.

Rule 1301 c 1 [BR6] (Procedure Immediately Prior to Sale—Bond).

Fiduciaries.

Rule 1373 [V73] (Fiduciary Bond).

Rule 1379 e 4 [V79] (Absent or Unknown Beneficiary—Distribution under Court Order—Decree—Court May Require Bond of Distributee).

Conservator.

Rule 1384 c [L72] (Bond).

Foreclosure.

Rule 1391 e 1 (a) [W74] (Sale—Preliminary Procedure—Bond).

See also Rule 1383 [V84] (Fiduciary—Removal for Cause) which authorizes the court to remove a fiduciary who fails to file a bond within the time required by the Rule or who fails to obey a court order; see also Code, article 90, §§ 4 and 6, with regard to other sanctions available where a trustee fails to obey a court order for countersecurity, viz.: sequestration, attachment and suit on the original bond; also see § 6 with regard to the taxing of costs in actions for countersecurity; and see Code, article 93, § 44, which authorizes a fiduciary and his surety to agree that all trust property will be placed in safe deposit, and may only be removed with the surety's consent or upon order of court.

Certiorari.

Rule K5 (Bond).

Ground Rents—Redemption—When Vested in Trustee, etc., Without Power of Sale.

Rule Y76 (Bond).

Committee note. — The rule is *not* intended to cover official bonds such as a bond required to be filed by a clerk pursuant to Art. 17, Secs. 47-48, inasmuch as this type of bond is required to be approved by the Judge and therefore does not fit within the framework of the general rule.

Rule H2. Filing—Approval.

a. *With Clerk—Recording.*

A bond shall be filed with, and recorded by, the clerk.

Cross reference.—See Code, article 17, § 53, with reference to recording of bonds by clerks.

b. *Approval.*

1. Approval by Clerk.

All bonds may be approved by the clerk as to amount, form and surety.

2. Submission to Court.

In case of the clerk's refusal to approve any bond submitted to him, or in case an adversary party objects in writing to a bond which has been filed with the clerk, the issue of whether or not such bond should be approved shall be determined by the court. In an adversary proceeding, such determination shall be made after all parties are given such notice and opportunity to be heard as the court shall direct.

(Rules 820, 1373 d [V73]; art. 17, §§ 37, 53.)

Committee note.—Where a section in the Bond Rule is based upon the provisions of an existing Rule, the reference in the source line is to the Rule rather than the statute upon which the Rule was based.

Rule H3. Deposit in Lieu of Bond.

a. *When Permitted.*

1. Supersedeas and Bail Bonds.

In lieu of filing a supersedeas bond pursuant to section a of Rule 817 (Stay of Execution of Final Judgment in Civil Cases—By Filing a Supersedeas Bond) or a bail bond pursuant to Rule 777 (Bail), a party may deposit with the clerk

money in an amount equal to the amount of the bond which would otherwise be required.

Explanatory note. — The reference to Criminal Rule 777 (Bail) is to the proposed revision of Chapter 700 (Criminal Causes). See Part II, this pamphlet.

2. Other Bonds.

Upon petition by a person required to file any other bond, the court may, for good cause shown, pass an order permitting the deposit of money in lieu of the filing of bond. Before passing such order, such notice and opportunity to be heard with respect thereto as the court shall direct shall be given to any adversary party and to any other person designated by the court.

b. *Release.*

1. Petition—Notice.

Money deposited in lieu of bond pursuant to this section shall be released only upon order of the court in which the same is deposited. Before passing such order, such notice and opportunity to be heard with respect thereto as the court shall direct shall be given to any adversary party, any person given notice of the filing of a petition pursuant to subsection 1 (b) hereof or his successor in interest, and any other person designated by the court.

2. Order—Filing of Bond.

The court may require the filing of a bond by the petitioner before the petitioner may withdraw money deposited in court where such bond appears necessary in order to protect any person in interest.

Rule H4. Increase or Decrease in Amount.

a. *Court Order—Generally.*

The court may at any time, for good cause shown, order the penalty of a bond to be increased or reduced.

b. *Approval of New Bond—Not Discharge of Past Liability.*

The approval of a new bond shall not discharge a bond theretofore filed from any liability which may have accrued before such approval.
(Rule 1373 c 3 [V73]; art. 26, § 16.)

Rule H5. Cost—Allowance of Bond Premium.

Where bond is required to be filed in an action and the surety thereon is a surety company authorized by the laws of Maryland to qualify as surety, the party entitled to the allowance of costs in such action pursuant to Rule 604 (Costs) may have included therein the amount of the premium charged by the surety company.
(Art. 24, § 29.)

Cross references. — Rule 1373 h [V73] (Fiduciary Bond—Payment of Premium Out of Income); see Code, article 48A, §§ 219-222 for statutory qualifications of corporate surety and Code, article 75, § 12 re service of process upon surety company.

Explanatory note.—The statute now provides that the premium is allowed in the costs of the party "entitled to recover or be allowed his costs". Rule 604a provides that costs are allowed in favor of the prevailing party "unless otherwise provided by law, or ordered by the court".

Rule H6. Application of Surety or Other Interested Person for Relief.

a. *By Surety for Countersecurity or to Be Relieved.*

A surety on a bond may petition the court—

(i) to require the principal to give countersecurity, or

(ii) to be relieved of further liability as surety for future acts or omissions of the principal.

b. *By Other Interested Person.*

A person interested in an action in which a bond has been filed may petition the court for additional surety, or for removal of an existing surety and substitution of a new surety therefor.

c. *Decree.*

1. Relief Prayed.

Where a petition is filed pursuant to subsection 1 of this section by a surety, the court shall order countersecurity or relieve the surety as prayed in the petition. Where a petition for another or an additional surety is filed pursuant to subsection 2 of this section by a person interested in the action, other than the surety, the court may, under appropriate circumstances order that such relief be granted.

2. Other Relief.

(a) Injunction.

The court, in which a petition is filed pursuant to subsection 1 or 2 of this section may, if necessary for the protection of the petitioner, grant an *ex parte* injunction to restrain the principal from action except in such manner as the court shall direct.

Cross reference. — Rule 1195 [BB70-BB80] (Injunctions—Equity).

(b) Accounting.

The court may require the principal to file an accounting for such period of time and to such an extent as it may direct whether or not the principal is required by any other rule to file accounts in court.

(Rule 1373f [V73].)

Cross references. — Rule 1374 [V74] (Fiduciary Subject to Court Jurisdiction—Accounting); Rule—(Receiver and Liquidating Trustee—Accounting).

Rule H7. Bond in Name of State.

a. *When May Be Given.*

The court may permit a bond to be given in the name of the State as obligee when the parties concerned therein are numerous, or for other good cause shown.

Explanatory note.—The statute provides that such bond may be permitted where the "parties concerned therein are numerous or for other reasons proper".

b. *Action on Bond.*

An action on such bond shall be brought in the name of the State for the use or benefit of any party in interest.

Explanatory note.—The statute provides that such bond "may be sued on by any person interested, as public bonds may".

Permission to sue need not be obtained from the State. State v. Norwood, 12 Md. 177; State v. Gaver, 115 Md. 250, 80 A. 891. The State has no interest in the bond and no cause of action arises until there has been a breach affecting a party in interest. *Ibid;* Lestrange v. State, 58 Md. 26.

c. *Certified Copy—Receipt in Evidence.*

A certified copy of such bond shall be received in evidence and have the same effect as a certified copy of a public bond.

(Art. 16, § 11; art. 17, § 41.)

Rule H8. Judgment.

Where judgment is given for the plaintiff in an action upon a bond, the judgment shall be for the amount found to be due.
(Proposed; art. 75, § 40.)

Cross reference.—Code, article 75, § 40 provides that the amount so found to be due shall be considered as the true debt and shall be so pleaded by and allowed to administrators and others.

Committee note.—Rule H8 is intended to change the pre-existing practice under Code, Art. 75, Sec. 40, which provided for judgment to be entered for the penalty of the bond, to be released upon payment of the amount actually found to be due. Under both the former practice and the practice as embodied in the rule, the claimant has the right to bring separate actions on the bond for each breach. Orendorff v. Utz, 48 Md. 298.

Explanatory note.—Sec. 40 of Art. 75 appears to be the outgrowth of certain technical common law pleading doctrines with reference to penal bonds, the background of which is set out in the Orendorff opinion. At common law, it appears that the claimant could obtain a judgment for the entire penalty of the bond, regardless of the actual damage suffered. The only recourse of the defendant would be to seek the intervention of an equity court to prevent execution for the entire amount of the judgment. The statute was passed in order to change the existing practice so as to provide that judgment in such cases would still be entered for the penalty of the bond, but would be released upon payment of the amount of damages actually awarded.

The reason for the retention of the practice of entering judgment for the entire penalty was because of the provisions of the statute of 8 and 9 William III, Ch. 11, Sec. 8, (which was in effect in Maryland, see Alexander's British Statutes, page 823, which authorized the entry of a judgment for the penalty of the bond to stand as security for subsequent breaches which might be recovered by *scire facias* rather than the bringing of an independent action.

Therefore the effect of the adoption of the proposed rules would be to supersede the statute of 8 and 9 William by making recourse to *scire facias* for subsequent breaches impossible.

Art. 75, Sec. 40 also provides that judgment, when entered, should be with interest and costs of suit. Apparently the interest referred to is merely interest on the judgment itself (State v. Tabler, 41 Md. 236) which is now covered in Rule 642; moreover the awarding of costs is apparently no different than any other action, which is now covered by Rule 60 4 a. Therefore the references to both interest and costs have been omitted.

SUBTITLE J. BURIAL GROUND—SALE FOR OTHER PURPOSE

Rule J70. How Commenced—Contents of Bill.

An action for the sale of a burial ground shall be commenced by filing a bill of complaint, which in addition to complying with Rules 301 (Form and Content) and 370 (Bill of Complaint—Petition), shall contain:

(1) A statement that said ground has been dedicated and used for burial purposes,

(2) A statement that the burial ground has ceased to be used for burial purposes,

(3) A statement that lots have been sold therein and deeds executed or certificates issued to purchasers thereof, if any,

(4) A list of the names and last known addresses of all lot owners or their assignees, so far as known, if any,

(5) A description of the burial ground sufficient to enable it to be located,

(6) A statement that it is considered desirable to dispose of said burial ground for other purposes and the reasons therefor.
(Art. 16, § 119.)

Cross references.—See Code, article 16, § 119, which authorizes a proceeding for the sale of a burial ground which has ceased to be used for such purposes.

For sale of cemeteries in Baltimore City where more than 75% of acreage has been abandoned or becomes a menace, see Code, article 16, § 120.

For authority of State's attorney to permit removal of dead bodies from graveyard for purpose of ascertaining the cause of death or for the purpose of reburial, see Code, article 27, §§ 265 and 267.

As to exemption from attachment or execution and insolvent laws of lots held only for burial, see Code, article 23, § 164.

As to condemnation of cemeteries, see Code, article 33A, § 10. See also Rules U1-U20 (Eminent Domain).

As to burial permits, interments and disinterments, see Code, article 43, § 19.

For extent of applicability of Rules in Chapters 1, 100 to 600 and 800, see Rule 1000 (Special Proceedings—General Rules Applicable).

Rule J71. Venue.

The action shall be brought in the county in which the burial ground lies. Where it lies partly in one county and partly in another, the action may be brought in a county in which any part of the land lies.
(Art. 16, § 119.)

Cross reference. — See Rule 621. Judgments in Actions Affecting Lands in More than One County (Proposed, See Part I, this pamphlet).

Rule J72. Order of Publication.

a. *Issuance—As of Course.*

Upon the filing of the bill of complaint, the clerk shall issue, as of course, an order of publication.

b. *Content—Notice—Publication.*

The order shall state the substance and object of the bill, shall give notice to all lot owners or other persons in interest to file an answer in opposition to the relief sought on or before a day fixed in the order and shall direct that a copy thereof be published as provided in Rule 105 d (Process by Publication—Content—Service).

c. *Posting.*

A copy of said order shall also be posted conspicuously upon said property and at all principal gates or entrances to said burial ground.

Rule J73. Proceedings after Order of Publication.

Upon failure of any party in interest to appear in response to the order of publication, the cause shall proceed ex parte, and the court may order testimony to be taken and pass such decree as may be proper. A certificate of publication of the order of publication shall be filed with the court before entry of a decree.

Cross references. — (1) For distribution of proceeds of sale among parties interested, see Code, article 16, § 119.

(2) For power of court before making distribution to order that part of proceeds may be set aside and applied to the removal and burial of any dead and the purchase of a lot in another cemetery, see Code, article 16, § 119.

(3) As to legal effect of decree on title, see Code, article 16, § 119.

(4) For sale of cemeteries in Baltimore City where more than 75% of acreage has been abandoned or becomes a menace, see Code, article 16, § 120.

SUBTITLE K. CERTIORARI

Rule K1. Definition.

As used in this Rule, "inferior tribunal" shall include the official or body, public or private, whose proceedings are sought to be reviewed.

Rule K2. Venue.

An application for a writ of certiorari shall be filed in the court of law in the county in which the proceedings sought to be reviewed take effect.

Rule K3. Petition—Contents.

The petition shall be verified pursuant to Rule 303 (Verification), and shall contain:

(1) A description of the proceedings sought to be reviewed and the inferior tribunal conducting the proceedings.

(2) A statement of the facts relied upon to show that the inferior tribunal was without jurisdiction or authority, or that the acts of the inferior tribunal were unconstitutional.

Rule K4. Issuance of Writ.

a. *By Court.*

The court may pass an order directing the writ to issue or an order to show cause why the writ shall not issue.

b. *To Whom Directed—Contents.*

The writ shall be directed to the inferior tribunal and require the production of all records of the tribunal in the matter before the court on or before the day named in the writ.

c. *Notice.*

The court may require notice of the proceeding to be given to any other person.

Rule K5. Bond.

Prior to the issuing of the writ the court in its discretion may require the petitioner to give bond conditioned to answer to any party for any damages which he may sustain by reason of the issuance of the writ if it shall be ultimately determined when the action is heard on the merits that said writ should not have issued.

Cross reference. — For amount of bond and procedure of filing, see Rules H1-H8 (Bond).

Rule K6. Service—Supersedeas.

The writ of certiorari or show cause order shall be personally served upon

any official of the inferior tribunal against whom it is directed. The service of the writ shall operate as a supersedeas, and no further proceedings shall be taken by the inferior tribunal against whom it is directed.

Rule K7. Hearing.

Upon the return of the writ and the receipt of the record certified, the court issuing the writ shall determine its own jurisdiction and the jurisdiction and validity of the proceedings of the inferior tribunal.

Rule K8. Motion to Quash—Intervention.

Any person deeming himself injuriously affected by the proceeding may move to quash the writ or otherwise intervene.

Cross references.—For general discussion of certiorari, see Poe on Pleading and Practice, 5th ed., Vol. 2, Sections 722 to 731 inclusive.

See also, "The Extraordinary Legal Remedy of Certiorari" by Justinus Gould, The Daily Record, October 28, 1938.

For certiorari as a method of review by Court of Appeals, see Rule 810 (Method of Review — Appeal) and Rule 811 b (How Appeal Taken—By Application for Certiorari). Rule 812 a (Appeal—Time for Filing).

Committee note. — The procedure provided by these Rules relates to certiorari at the trial court level and not on the Court of Appeals.

SUBTITLE L. CONSERVATOR

(1958 Md. Rule 1384)

(1958 MD. RULE 1384)

SUBTITLE P. CONTEMPT

Rule P1. Definitions.

As used in this Rule:

a. *Direct Contempt.*

A "direct contempt" means a contempt committed in the presence of the court, or so near to the court as to interrupt its proceedings.

b. *Constructive Contempt.*

A "constructive contempt" means a contempt which was not committed in the presence of the court, or so near to the court as to interrupt its proceedings.

c. *Defendant.*

"Defendant" means a person against whom contempt proceedings have been instituted.

Cross references. — Code, article 26, § 4, lists acts which may be punished summarily as direct contempts. Although the statute purports to limit the court's power to punish as direct contempts only the acts listed, it has been held that the statute does not circumscribe the inherent power of the courts to punish any other contemptuous act. Baltimore Radio Show v. State, 193 Md. 300, 67 A. (2d) 497, cert. den. 338 U. S. 912.

Also see the following Code and Rule sections authorizing contempt proceedings in certain specific instances: Article 12, § 7 (e) (bastardy proceedings); article 16, § 64 (secreting infant against whom process has issued); article 27, § 91 (desertion proceedings); article 27, § 99 (destitute child proceedings); article 35, § 16 (refusal of witness to give evidence); article 47, § 32 (insolvency proceedings); article 51, § 16 (failure to obey jury summons); article 52, §§ 37-38 (proceedings before justice of the peace); article 66½, § 349 (proceedings before traffic court magistrates); article 87, §§ 16-19 (failure of sheriff to serve process from another county); article 91, § 7 (resurvey proceedings); Rule 414 a (depositions); Rule 422 d (discovery); Rule 628 e (supplementary proceedings); Rule 731 c [Proposed] (criminal proceedings); Rule 1195 k 1 [BB80] (violation of injunction).

Explanatory note. — The definitions of "direct" and "constructive" contempt are taken from the statutory source. There is no uniform nomenclature for the person proceeded against for contempt and the Committee believes that "defendant" is superior to other possible alternatives, e. g. respondent, accused, etc. The present definition of "defendant" in Rule 5 j is not broad enough to include a person cited for contempt.

Rule P2. Application.

a. *To Apply to Civil and Criminal Contempt.*

This Rule shall apply to both civil and criminal contempts.

Explanatory note.—There is often a thin line between civil and criminal contempt. The chief distinguishing characteristic appears to be that the object of the former is remedial or coercive while the object of the latter is punitive. Kelly v. Montebello Park Co., 141 Md. 194, 118 A. 600. The Court of Appeals has held that a person proceeded against for criminal contempt is not entitled to the same safeguards as a defendant in a criminal proceeding. There is no right in a criminal contempt proceeding to indictment by a grand jury or trial by jury. Sheets v. City of Hagerstown, 204 Md. 113, 102 A. (2d) 734.

This is so regardless of the fact that the alleged contumacious act may also constitute a criminal offense. *Ibid.*; Hitzelberger v. State, 173 Md. 435, 196 A. 288. However the court has said that in a criminal contempt case the defendant must be proven guilty "beyond a reasonable doubt" (Donner v. Calvert Distillers Corp., 196 Md. 475, 77 A. (2d) 305; In re Lee, 170 Md. 43, 183 A. 560, cert. den. 298 U. S. 680) or "by clear and convincing proof" (Sheets v. City of Hagerstown, 204 Md. 113, 102 A. (2d) 734) and he cannot be compelled to give evidence against himself. (Donner, *supra*).

b. *Contempt in the Court of Appeals.*

This Rule shall be applicable to a proceeding for contempt of the Court of Appeals, except that—

(1) the Attorney General or any other member of the bar may be appointed as prosecutor, and

(2) section d (3) of Rule P4 shall not be applicable to such proceedings.

c. *Labor Cases.*

Rules P1 to P5 do not modify or supersede Sections 72 and 73 of Article 100 of the Code.

Explanatory note. — The cited statutes deal with certain procedural aspects of constructive criminal contempts for violation of injunctive orders in labor cases. The principal procedural difference is that the defendant is afforded the right of trial by jury in such cases. The rule is consistent with Rule 1195 b 2 [BB71] (injunction) which similarly excepts injunction procedure in such labor cases from the general rules.

Rule P3. Direct Contempt.

a. *Summary Punishment.*

A direct contempt may be punished summarily by the court against which the contempt was committed.

b. *Order of Contempt.*

Where a direct contempt is committed, the court shall sign a written order to that effect. The order shall recite the facts, be signed by the judge and entered of record. The order shall state which of the facts were known to the court of its own knowledge and as to any facts not so known, the basis for the court's finding with respect thereto.

Explanatory note.—The language of this subsection is largely derived from Federal Criminal Rule 42 (a) and New Jersey Civil Rule 4:87-1.

The purpose of requiring a statement of the facts upon which the decision is based is to enable the appellate court to determine, by an inspection of the record, whether a contempt has in fact been committed and whether the court had jurisdiction to punish it. See annotation in 154 ALR 1227: "Necessity and Sufficiency of Making and Recording Subsidiary or Detailed Findings Supporting Adjudication of Direct Contempt."

c. *Record.*

The record in such cases shall consist of

(1) such order of contempt,

(2) any affidavit filed by the defendant,

(3) any affidavit filed by the State's attorney in support of the order of contempt, if the court directed him to investigate or prosecute the contempt, and

(4) any testimony offered.

Explanatory note. — The proposed rule makes the following changes in the present statute:

1. The statute appears to provide that the State's attorney shall file an affidavit in every case. This is obviously unnecessary in most cases of direct contempt and paragraph (3) of Section C, as written, makes it clear that the court may, but is not required to, refer the matter to the State's attorney.

2. The statute also appears to require the party desiring to offer testimony to first file an affidavit which the testimony will support.

Rule P4. Constructive Contempt.

a. *Who May Institute.*

Constructive contempt proceedings may be instituted by the court of its own motion, by the State's attorney or by any person having actual knowledge of the alleged contempt.

Explanatory note.—The Maryland statute is silent as to who may institute such proceedings. However they make it clear that the court of its own motion or

an individual having personal knowledge may institute proceedings. In re Lee, 170 Md. 43, 183 A. 560, cert. den. 248 U. S. 680, held that the court could on its own motion issue the contempt citation where the alleged contempt was the newspaper publication of the verdict of the court *in banc* before it had been announced. It was also held that it was unnecessary to file any formal complaint where the facts were within the personal knowledge of the court. In Sheets v. City of Hagerstown, 204 Md. 113, 102 A. (2d) 734, the proceeding was brought by the City without the filing of a complaint or affidavit. It was held that due process had been satisfied since the defendant was adequately informed of the charge by the show cause order.

b. *Notice to Defendant.*

1. Show Cause Order.

(a) Issuance.

If the court determines to cite the defendant for contempt, it shall issue an order requiring the defendant to show cause why an order adjudging him in contempt shall not be passed within the time stated therein.

(b) Contents.

The show cause order shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged.

(c) Service.

The show cause order shall be served upon the defendant pursuant to Rule 104 (Service of Process—Generally) unless the defendant has appeared as a party in the action in which the contempt is charged, in which case service shall be in the manner prescribed by the court.

Explanatory note.—The present statute merely provides for the issuance of a show cause order. Paragraph (b) is copied verbatim from the similar Federal and New Jersey Rules.

2. Written Statement.

A copy of any writing or document filed in support of the alleged contempt shall also be served upon the defendant.

Explanatory note. — There is likewise nothing in the statute about this, although any such writings are part of the record in a direct contempt proceeding and the prevailing practice is apparently to serve such upon the defendant. See In re Lee, 170 Md. 43, 183 A. 560, cert. den. 248 U. S. 680. The rule purposely omits reference to "affidavit" since it has been held that the charges need not be under oath, and there apparently is no requirement that any writing in support of the citation be filed at least where the citation adequately informs the defendant of the charge. See cases cited under section a of Rule P4.

c. *Default—Answer.*

If the defendant shall answer, the charge shall be set for hearing. If no cause be shown within the time named in the order, the case shall be heard *ex parte.*

d. *Hearing.*

1. Appointment of Prosecutor.

The court may designate the State's attorney or any other member of the bar to prosecute the proceeding.

Explanatory note. — This subsection is patterned after a similar provision in the New Jersey Rule. The Maryland statute provides that all constructive contempts shall be prosecuted by the State's attorney as though they were criminal cases. The Committee believes that it is advisable to permit the court to designate an attorney in private practice, which action might be appropriate, for example, where the contempt involves the State's attorney or his office personally. The proposed rule also has the effect of making the appointment of a prosecutor discretionary with the court although the present statute appears to require prosecution in all cases of con-

structive contempts by the State's attorney. The Committee feels that this should be left up to the court, which might well dispense with the necessity of a prosecutor in a civil contempt proceeding where all parties are represented.

2. By Court Without Jury.

The hearing shall be by the court without a jury.

Explanatory note.—This is the present statutory provision. Denial of trial by jury of an alleged contempt has been held constitutional even though the act which allegedly constitutes the contempt is also a criminal act. Sheets v. City of Hagerstown, 204 Md. 113, 102 A. (2d) 734; Hitzelberger v. State, 173 Md. 435, 196 A. 288. Cf. Article 100, Section 72 (c) which specifically confers the right to a jury trial in labor cases.

3. When Judge Disqualified.

Unless a defendant otherwise consents, the judge who issued a citation for constructive contempt shall be disqualified from presiding at the hearing except where such contempt consists of failure to obey an order or judgment in a civil case.

Rule P5. Bail.

Where a defendant has been committed for a contempt he shall have the same rights with respect to admission to bail pending appeal as an accused in a criminal proceeding.

(Art. 26, § 5.)

Cross references.—Rules 636 (Enforcement of Process, Rules and Orders—By Contempt), 685 c (Enforcement of Decree and Order — Contempt), 777 (Bail) [Proposed Revision Chapter 700 (Criminal Causes)].

Explanatory note.—There is no corresponding provision in the present statute except contempts in labor cases where it is provided that the defendant is entitled to bail. Article 100, Section 72.

SUBTITLE Q. DEATH BY WRONGFUL ACT

Rule Q40. Application of Rule.

The Maryland Rules shall apply to all actions for wrongful death brought under Code, Article 67 and under Article 101, Section 58, whether the cause of action arose in this State or elsewhere.

(Art. 67, § 2.)

Cross references.—See Code, article 67, § 2, which provides that, where suit is brought in Maryland under a wrongful death action arising in another state, territory or the District of Columbia, the substantive law of the place where the cause of action arose should be applied.

See also, Code, article 93, § 111, and Rule 205 a (Capacity — Representative), which allows the personal representative of the decedent to commence and prosecute any personal action the decedent might have commenced or prosecuted.

Rule Q41. Plaintiffs.

a. *Cause of Action in This State.*

Where such cause of action arose in this State all persons who are or may be entitled to damages by reason thereof shall be named as plaintiffs whether or

not they joined in bringing the action; however, the names of those who did not join in bringing the action shall be preceded by the words: "to the use of ....".
(Proposed.)

Cross reference.—Article 67, § 4 provides that wrongful death actions arising in Maryland are for the benefit of the spouse, parent and child of the deceased, or if there be no such person, then any person related to the deceased by blood or marriage who was wholly dependent upon the deceased.

Committee note.—Rule Q41 (Plaintiffs) abolishes the heretofore existing practice of bringing wrongful death actions in the name of the State of Maryland.

b. *Cause of Action in Foreign Jurisdiction.*

Where such cause of action arose in a foreign jurisdiction, any person who is entitled to bring suit under the laws of such jurisdiction may bring suit in this State.
(Art. 67, § 3.)

Rule Q42. Necessary Allegations.

In addition to all other facts required to be pleaded, the original pleading of the plaintiff in such action shall state the plaintiff's relationship to the decedent, his right to bring the action, the names and last known addresses of all persons who are or may be entitled by law to recover damages and their relationship to the decedent.
(Proposed.)

Rule Q43. Intervention.

Any person claiming to be entitled to damages in such action may intervene as a party plaintiff at any time prior to verdict or judgment *nisi.*
(Proposed.)

Rule Q44. Apportionment of Damages.

Whenever more than one person shall be found to be entitled to damages in such action, the jury shall, by its verdict, apportion damages among such persons.
(Art. 67, § 4.)

SUBTITLE R. DISABILITY—PERSONS UNDER

Rule R70. Definitions.

As used in this Subtitle, the following terms have the following meanings.

a. *Infant.*

"Infant" means a natural person who has not attained the age of twenty-one years, whether male or female.

b. *Incompetent.*

"Incompetent" means a natural person afflicted with any species of mental unsoundness which incapacitates him from protecting himself or his property against his own weakness or the artifice of others, and includes an habitual drunkard.

c. *Habitual Drunkard.*

An "habitual drunkard" is one who is habitually addicted to the use of any intoxicant, drug or narcotic to the extent that he is incapable of caring for himself or his property.

(Art. 16, § 43.)

Committee note.—This rule does not apply to proceedings to obtain treatment of the indigent inebriates at public expense. Such proceedings are covered by Art. 16, §§ 44-48.

Explanatory note.—In the interest of simplification and standardization of procedure the proposed rules purport to pull together all statutory provisions relating to incompetency, whether arising from actual mental disability (the traditional *non compos mentis*) or from other causes rendering a person incompetent to care for himself or his affairs, such as infancy, habitual drunkenness or narcotic addiction. The jurisdiction of the equity courts over such persons and their affairs is basically the same, and the problem is fundamentally alike in every case. The result, however, marks a substantial change in procedure in many instances, in the interest of standardization and also in the interest of due process. The result is intended to fit into the pattern approved by the Court of Appeals in Matter of Easton, 214 Md. 176, 133 A. (2d) 441.

Rule R71. Infants—Property of.

a. *Venue.*

A petition for the encumbrance, sale or alienation of property of an infant for the benefit and advantage of the infant shall be filed in the equity court of the county in which such infant resides, or, if such infant is a non-resident, in the county in which the property is located.

Committee note. — This rule extends only to those situations in which the jurisdiction of the court is rested upon a finding that the proposed action is for the benefit and advantage of the infant. Art. 16, §§ 51, 53, 54, 59. It does not apply, for example, to a proceeding to sell property in which an infant has an interest for purposes of partition under Art. 16, § 154. See Proposed Rule BJ71 (Sale for Purposes of Partition). It is not intended to conflict with the jurisdiction of Orphans' Court.

b. *Petition.*

The petition shall be filed by the guardian or next friend of the infant and shall state the property of the infant, the relief sought, and the facts and circumstances showing such relief to be for the benefit and advantage of the infant.

c. *Service.*

The infant shall be summoned as a defendant pursuant to Rule 119 (Service—Persons Under Disability).

d. *Additional Parties.*

Any other person affected by the relief sought may be made a defendant.

e. *Guardian ad Litem.*

When an infant has been summoned, the court shall appoint a guardian *ad litem,* who shall appear and answer for the infant.

f. *Proof.*

No decree authorizing the encumbrance, sale or alienation of property of an infant may be entered except upon proof of facts and circumstances showing the relief to be for the benefit and advantage of the infant and upon the testimony or verified certificate of two qualified persons as to the value of the property involved.

g. *Decree.*

The court in its decree may appoint a trustee to take such action as may be necessary to carry out the terms thereof.

Cross references.—For sale procedure and conduct of fiduciary, see Rules 1371-1383 (Fiduciaries) [Subtitle V. Fiduciary]. For procedure to record decree, see Rule 619 (Recording of Judgment).

Committee note. — The disposition of the proceeds of any action with respect to an infant's property are thereafter subject to control of the court. Art. 16, §§ 53, 61, 62. Proceeds may, however, in certain cases be delivered to the guardian of the infant, who thereafter administers the fund under the supervision of the Orphans' Court. Art. 16, § 60.

Rule R72. Adjudication of Incompetency—Venue.

A petition seeking the adjudication of a person as an incompetent shall be filed in the equity court of the county in which such person resides; or, if the alleged incompetent is a nonresident, of the county in which he has real property; or if the alleged incompetent is a non-resident without real property in this State, then of the county in which he is physically present.

Cross references. — For jurisdiction of the court with respect to incompetents by reason of mental disability, see article 16, §§ 132, 135. For jurisdiction of the court with respect to incompetents by reason of habitual drunkenness, see article 16, § 43.

Committee note.—The petition may be filed by any person having an interest in the alleged incompetent. The petitioner need not be a member of the alleged incompetent's family. Gerke v. Colonial Trust Co., 117 Md. 579, 83 A. 1092. The protection of the equity court may be invoked where any species of mental unsoundness is clearly shown to incapacitate a person from protecting himself or his estate from his own weakness or the artifice of others. Matter of Easton, 214 Md. 176, 133 A. (2d) 441. This proceeding is to be distinguished from the appointment of a conservator: Art. 16, §§ 149-153, Rule 1384 (Conservator) [L70-L74]. The court has jurisdiction to inquire into and adjudge incompetent a nonresident within the state although he has no property in the state. Bliss v. Bliss, 133 Md. 61, 63, 104 A. 467. This rule is not intended to conflict with the authority of the county commissioners and others to petition the criminal courts for confinement of indigent incompetents. Art. 59, § 1.

Rule R73. Petition—Certificate.

a. *Contents.*

A petition for adjudication of a person as an incompetent shall be titled, "In the matter of ....., Alleged Incompetent", shall be signed and verified by the petitioner, and shall contain the following information:

(1) The name, age, race, sex and address of the alleged incompetent.
(2) The relationship to or interest of the petitioner in the alleged incompetent.
(3) The name and address of the person with whom the alleged incompetent resides.
(4) The names and addresses of the closest relatives of the alleged incompetent so far as known to the petitioner.
(5) The condition causing the alleged incompetency and the reason for seeking an adjudication.

(6) The nature and value of the property of the alleged incompetent, if any.

(7) The relief sought as to both the care of the person and the management of the property of the alleged incompetent.

b. *Certificate.*

The petitioner shall file with the petition signed and verified certificates of two physicians, licensed to practice medicine, one of whom shall have attended the alleged incompetent within ten days before the filing of the petition. Each such certificate shall state the qualifications of the physician, the date of his last examination of the alleged incompetent, his opinion of the mental competency of the alleged incompetent and the cause, nature, extent and probable duration of such incompetency.

Committee note.—The above represents a departure from present practice in the interest of simplification and standardization. It is intended to supply the court in every case with the information which it needs to act, and to inform the alleged incompetent in the event that the charge is falsely brought. The application for the writ *de lunatico inquirendo* under that name is abolished in favor of a simple prayer for specific relief, but the principle is intended to remain unchanged.

Explanatory note. — The latter part of this section will require some revision of Art. 16, § 135. Section 135 refers to "two attending neuropsychiatrists", a term not defined elsewhere in the Code. There is no provision in the Code for the licensing of psychiatrists or "neuropsychiatrists". Section 135 is also vague in that it is not clear whether the certificate of one medical doctor and one "neuropsychiatrist" would be sufficient and it is not clear whether, if doctors' certificates are used, one of them must have attended the alleged incompetent within the ten days before the filing of the petition. The draft of the rule set out above would require the amendment of Section 135 to clarify these points, to substitute the word "physicians" for both "doctors" and "neuropsychiatrists" in line with the phraseology of Art. 59, Sec. 31, and to eliminate the requirement of licensing in Maryland.

Rule R74. Process—Notice.

a. *Show Cause Order.*

Upon the filing of the petition, the court may issue a show cause order pursuant to Rule 324 (Show Cause Order—Order Nisi).

b. *Service.*

The petition, summons and order, if any, shall be served pursuant to Rule 119 (Service of Process—Defendant under Disability), except that, if the alleged incompetent resides with the petitioner, a copy of the petition, summons and order, if any, shall be served on such other person as the court may direct.

c. *Additional Notice.*

The court may also require notice of the proceeding to be given to such other person as justice may require.

Rule R75. Apprehension of Person.

After filing of the petition the court may, in its discretion, and upon such investigation as it deems necessary, issue an order requiring the apprehension of the alleged incompetent and providing for his custody and appearance before the court.

Explanatory note. — This power of arrest is now provided in Art. 16, § 43, with respect to habitual drunkards. It is equally desirable with respect to mental incompetents.

Rule R76. Guardian ad Litem.

a. *Appointment.*

The court may appoint for the alleged incompetent a guardian *ad litem* pursuant to Rule 275 (Capacity—Representative).

b. *Duties.*

The guardian *ad litem* shall investigate the facts of the case, and shall report his findings in the answer which he shall file on behalf of the alleged incompetent.

Explanatory note.—This is new; it is intended to safeguard against improper adjudication, and provide a method of independent investigation for the court. Cf. Adams v. May, 196 Md. 152, 159, 75 A. (2d) 839.

Rule R77. Trial.

a. *Hearing.*

When an habitual drunkard shall file in the proceeding a written consent to adjudication or a written waiver of jury trial, or when the only relief sought is the appointment of a committee of the property of an alleged incompetent, the court shall hold such hearing as in its discretion it shall deem proper. In all other cases, the court shall promptly empanel a jury pursuant to section b of this Rule and after the jury is empanelled and sworn, the trial shall be conducted as in a civil action at law.

b. *Jury.*

For such trial the court shall draw jurors from the jurors in attendance upon the law or criminal court, or, if there be none, from the names upon the regular jury list of the last jury term of the law or criminal court, and a jury of twelve shall be selected therefrom pursuant to Rule 543 (Jury—Selection, etc.).

c. *Verdict.*

After hearing the evidence, the jury shall return a special verdict pursuant to Rule 560 (Special Verdict).

Committee note. — Where the relief sought in the petition is the appointment of a committee of the person and property of the alleged incompetent, the evidence may show that he is competent to care for his person but not his property. Submitting these two issues to the jury as separate questions enables the jury to so find.

Rule R78. Decree.

a. *Content.*

Dependent upon the verdict of the jury or the finding by the court, sitting without a jury, or upon consent of an habitual drunkard, the court may appoint such committee, direct such confinement and treatment of the incompetent, and make such provisions with respect to his property, as the best interest of the incompetent may require.

b. *Modification.*

The decree shall be subject to modification or revocation as justice may require.

Cross references.—For who may be appointed as committee, see article 16, § 133. See also Estate of Rachel Colvin, 3 Md. Ch. 278. For authority of a committee of the person to confine the incompetent by reason of mental disability, see article 16, § 144.

Committee note.—Where the incompetency exists by reason of mental unsoundness, the court may not, except upon an appropriate jury verdict, appoint a committee of the person of the incompetent or provide for his confinement. See Art. 16, §§ 144, 135. Where the incompetency exists by reason of habitual drunkenness, the court may not, except upon an

appropriate jury verdict or upon written consent of the habitual drunkard, appoint a committee of the person of the habitual drunkard or provide for his confinement. Art. 16, § 43.

Rule R79. Duties of Committee.

a. *General.*

The committee shall proceed with respect to the property of the incompetent pursuant to Subtitle V (Fiduciary) [Rules 1371-1383].

b. *Property Held with Spouse of Incompetent.*

Where by petition filed in the proceeding the committee seeks authority to affect the property interests of the spouse of the incompetent, a copy of the petition shall be served upon the spouse and he shall be given an opportunity to appear and answer such petition. Where the spouse of an incompetent seeks to affect the property interest of an incompetent, he shall file a petition in the incompetency proceeding and shall serve a copy upon the committee.
(Art. 16, § 138.)

Cross references. — For power of the court appointing a committee of the property of an incompetent to sell the incompetent's property for the advantage of the incompetent, see article 16, §§ 137, 140; to mortgage or lease, see article 16, §§ 139, 140; to sell property held by the incompetent as tenant by the entireties, see article 16, § 138(a); to sell or mortgage property in which the incompetent has an inchoate right of dower, see article 16, § 138(b). For power of the court appointing a committee of the person and property of an incompetent to support the incompetent and pay the expenses of the committee, see article 16, § 143. For power of the court appointing a committee of the person or property of an incompetent to support others out of the surplus income in hardship cases, see article 16, § 135A. For power of court to authorize the exercise of a right of an incompetent to dispose of or encumber any real or leasehold property in which the incompetent has an interest, see article 16, § 147. For general power of equity courts to partition lands in which an incompetent has an interest, see article 16, § 154.

Committee note. — Once the committee has been appointed, his sales and purchases of assets, disbursements, and other acts may be done upon simple petition to the court, and proper proof that the proposed action is to the interest and advantage of the incompetent, without notice to the incompetent. Matter of Easton, *supra.*

Rule R80. Recovery.

a. *Petition to Terminate Decree of Incompetency.*

An incompetent may file a petition in the proceeding, seeking termination of the decree of incompetency on the ground that he is no longer incompetent.

b. *Jury Trial.*

Unless the court shall find, after such investigation as it may deem necessary, that there is no substantial basis for the petition, the court shall hold a hearing pursuant to Rule R77 (Trial).
(Art. 16, § 145.)

Cross references. — For habeas corpus proceedings by the State's attorney to secure release from confinement of patient in institution for the insane, see article 59, § 20. For petition to law court by confined incompetent or officer of institution, see article 59, § 21.

Committee note. — The incompetent is entitled to have the question submitted to a jury. Art. 16, § 145. Where a person has been adjudged insane, the burden is on him subsequently to prove sanity. Johnson v. Safe Deposit & Trust Co., 104 Md. 640, 65 A. 333; Greenwade v. Greenwade, 43 Md. 313.

SUBTITLE S. DIVORCE, ANNULMENT AND ALIMONY

(1958 Md. Rule 1190)

(1958 MD. RULE 1190)

SUBTITLE T. EJECTMENT

(1958 Md. Rules 1150-1156)

(1958 MD. RULES 1150-1156)

SUBTITLE U. EMINENT DOMAIN

Rule U1. Scope.

A proceeding for condemnation of property shall be conducted in conformity with Rules U1 to U10, inclusive.

Committee note.—This rule is intended to provide a uniform procedure for the condemnation of property and to that extent supersedes all such procedures provided for in statutes. The statutory procedure superseded by this Rule includes those set forth in Art. 23, Section 141 (Companies for the Erection of Bridges or Construction of Canals—Condemnation in event of failure to agree or disability to contract); Section 168 (Mining Companies —Power as to railroads including condemnation); Sections 193-200 (Railroad Companies—Purchase of land, etc., condemnation); Section 237 (Railroad Companies—Construction of bridges or tunnels when public highway crosses tracks—Condemnation); Sections 333-341 (Water Companies —Right of Condemnation—Condemnation of Property by Corporations); Article 25, Section 162 (Erosion — Acquisition of lands); Article 33A (Eminent Domain); Article 44A, Section 13 (Housing Authorities—Eminent Domain); Article 66C, Section 372 (Natural Resources — Eminent Domain); Article 77, Section 58 (Public Education—Eminent Domain); Article 89B (State Roads), Section 64 (Condemnation).

Rule U2. Venue.

a. *General.*

A petition for condemnation shall be filed in a court of law in the county in which the property sought to be condemned is situated.

b. *Property in More than One County.*

Where the property sought to be condemned is partly in one county and partly in another, the petition may be filed in the court where any part of such property is situated.

(Art. 33A, §§ 1, 26.)

Cross reference. — See proposed Rule 621 (Judgments in Actions Affecting Lands in More than One County).

Rule U3. Petition—Contents.

The petition shall contain the following information:

(1) The names of all persons owning interests in the property sought to be condemned. If any owner is not known he may be described as the unknown heir of a deceased owner or as unknown.
(2) A description sufficient to identify the property sought to be condemned.
(3) The purpose for which the property is sought to be condemned.
(4) That the owners of the property and the petitioners are unable to agree, or that an owner is under a legal disability, or unknown, or non-resident, or the proceeding is necessary to clear defective title, as the case may be.
(5) The amount of money paid into court, if any.
(6) A prayer that said property may be condemned.

(Art. 33A, § 1.)

Rule U4. Process.

Upon the filing of the petition, process shall be issued and served on all persons named as owners in the petition pursuant to Rule 103 (Process—Issuance—Return), to Rule 106 (Service of Process—Corporations), inclusive, and Rule 111 (Land Action).
(Art. 33A, §§ 2, 22.)

Rule U5. Intervention.

Any person who claims an interest in the property sought to be condemned may petition to intervene as a party defendant at any time during the proceedings. Upon such petition the court may order that such person be made a party defendant subject to such terms and conditions as the court shall direct.
(Art. 33A, § 11.)

Rule U6. Responsive Pleading.

a. *General.*

The defendant shall plead to the petition within the time allowed by Rules 307 (Time for Defendant's Initial Pleading) or 309 (Time—Extension or Shortening).

b. *Defendant under Disability.*

If a defendant is a person under disability, his legally appointed guardian or committee, if any, shall answer and defend pursuant to section a of this Rule. If such defendant has no legal guardian or committee, the court shall, upon application, appoint a guardian *ad litem.* The court, whenever it deems necessary, may also appoint an attorney for the guardian *ad litem,* whose compensation shall be fixed by the court and paid out of the amount awarded to the person under disability.

Rule U7. Trial.

a. *Date.*

When all of the defendants have either answered, or are in default for failing to answer, the case shall be assigned an early date for trial. Upon the application of any party the court shall set the case for trial not less than ten nor more than thirty days from the date of said application.
(Art. 33A, §§ 5, 23.)

b. *Selection of Jury.*

The jury shall be selected in the manner provided in Rule 543 (Jury—Selection, Strikes, Challenges, etc.).
(Art. 33A, § 6.)

c. *Oath—Jurors.*

The jury shall be sworn by the clerk and in addition to the usual oath in civil cases, they shall be sworn to value justly and impartially the damages which the defendant will sustain by the taking of the property described in the petition, by the petitioner for the purposes therein set out, and damages to the remainder thereof, if any.
(Art. 33A, § 7.)

Rule U8. View by Jury.

After opening statement by counsel, or prior thereto, if the court shall so order, the court shall direct an officer of the court to take the jury to the property sought to be condemned. A party, his attorney, engineer and other repre-

sentative, shall also have the right to be present on the premises with said officer of the court and jury. Each party shall be entitled to designate one person, acceptable to the court, who shall be the only person entitled to speak for such party on the premises. Such person shall point out to the jury the property sought to be condemned and the boundaries thereof and shall show the jury any adjacent property of the owners claimed to be affected by the taking. Such persons may also point out the physical features, before and after the taking, of the property taken and of the adjacent property of the owner claimed to be affected.

Rule U9. Costs.

The petitioner, in all cases, shall pay the costs of the lower court proceedings as taxed by the clerk. The costs of any appeal shall be taxed as provided for in Rule 882 (Awarding of Costs). The costs in condemnation proceedings shall include, in addition to the costs taxed in ordinary actions at law, the usual per diem to the jurors in the trial of the case, the cost of the transportation of the jury in viewing the property, the cost of recording the inquisition, and counsel fees for the defendant in the event that it is determined on appeal that the petitioner had no right to condemn. The costs, however, shall not include any meals for the jury unless otherwise ordered by the court.
(Art. 33A, §§ 16, 19.)

Rule U10. Payment of Award—Prevented.

If, after final judgment, the petitioner is prevented from paying an amount awarded because a defendant refuses to receive the same, or is out of the jurisdiction of the court, or is a person under disability, or is unknown, the petitioner shall pay said amount, or may pay the entire award, into court for the use of said defendant or of all defendants, as the case may be, and thereby become vested with the title, estate or interest so condemned.
(Art. 33A, §§ 14, 24.)

Rules U11-U14. (Reserved).

Rule U15. Board of Property Review Procedure—Scope.

Rules U15 to U20, inclusive, apply to all cases under Article 89B of the Code, which may be certified to a board of property review.
(Proposed.)

Cross reference.—The Property Review Procedure applies to condemnation proceedings by the State Roads Commission under article 89B, §§ 10-20, 1957 Code.

Rule U16. Certification to Board.

a. *Filing.*

Within six months after the commencement of condemnation proceedings by the recording of the plats or maps and the payment of money into court, as required by law, any party may have the case referred to the Board of Property Review by filing a notice in writing with the clerk of the court. A copy of the notice shall be served on all parties, pursuant to Rule 306 (Service of Pleading or Notice).

b. *Duty of Clerk.*

The clerk shall promptly certify the case to the Board of Property Review by sending all pleadings and exhibits and a certified copy of the docket entries to the Chairman of the Board.
(Proposed.)

Rule U17. Hearing.

a. *Date.*

The Board of Property Review shall hear the case promptly and in no case later than three months after the filing of the notice of referral. Priority shall be given a case involving a dwelling house or a commercial building.

b. *Notice.*

The Board of Property Review shall give each party at least ten days prior written notice of the date, time, and place of the hearing.

c. *Case Unheard Within Three Months.*

If the Board of Property Review shall not have heard the case within three months after the filing of the notice of referral, upon a request in writing sent to the Chairman of the Board by any party, the case shall immediately be returned to the court.
(Proposed.)

Rule U18. View by Board.

The Board of Property Review shall view the property in question before assessing the damages.

Rule U19. Hearing Before Board.

a. *Informal.*

The hearing shall be informal and rules of evidence shall not be strictly enforced.

b. *Witnesses Sworn.*

Witnesses shall be sworn by a member of the Board of Property Review or some other officer of the court.

c. *Conduct of.*

The Board of Property Review shall hear evidence on behalf of each party. Each party shall have the right to be represented by counsel and to cross-examine.

d. *Findings.*

The Board of Property Review shall promptly make its findings, notify all parties thereof in writing and file a copy of such findings and notice with the clerk of the court within thirty days after the hearing.

Cross reference. — See Congressional School of Aeronautics, Inc. v. State Roads Commission, 218 Md. 236, 146 A. (2d) 558, holding that the prior award of the Board of Property Review was properly excluded as inadmissible, being hearsay.

Rule U20. Appeal.

a. *Time—Notice.*

Within thirty days after filing of the findings of the Board of Property Review in the proceedings, any party may appeal to the court by filing notice thereof with the clerk.

b. *Condemning Authority—Duty on Appeal.*

Within thirty days after an appeal is taken in a case, the condemning party shall prepare and file the petition for condemnation with the clerk of the court, unless previously filed.

c. *Appeal Heard De Novo.*

The appeal shall be heard de novo as if there had been no hearing before the Board of Property Review.

SUBTITLE V. FIDUCIARY

(1958 Md. Rule 1371-1383)

(1958 MD. RULES 1371-1383)

SUBTITLE W. FORECLOSURE OF MORTGAGES AND OTHER SECURITY DEVICES

(1958 Md. Rules 1391-1395)

(1958 MD. RULES 1391-1395)

SUBTITLE X. FRAUDULENT CONVEYANCE—VACATION BY NON-JUDGMENT CREDITOR

Rule X70. Judgment at Law Not Prerequisite to Relief.

In an action in equity to vacate a conveyance, contract or other act as fraudulent against creditors, it shall not be necessary, as a condition to the granting of re-

lief, that any creditor or plaintiff shall have obtained a judgment at law on his claim to enable him to participate in the benefit of the decree.
(Art. 16, § 39.)

Cross references. — *Code, Article 39B*—Uniform Fraudulent Conveyance Act.

Code, Article 45, Secs. 1, 2 and 11—relating to fraudulent conveyances between husband and wife.

Code, Article 47, Secs. 8, 9 and 10—relating to fraud or undue preferences in insolvency proceedings, insofar as the same has not been superseded by the Federal Bankruptcy Act.

Explanatory note.—At common law the creditor was required to obtain a lien by judgment as preliminary to equitable relief. The statute is intended to protect creditors by removing the hazards attending the delay in obtaining judgment, and in the case of personal property, levying execution. Miller Equity Procedure, Secs. 730-732, pps. 832-4.

The latter part of the statutory source (Art. 16, sec. 39) relating to issues to a court of law for determination is superseded by proposed Rule 517 (Advisory Jury Verdict Abolished). See Committee note to proposed Rule 517.

SUBTITLE Y. GROUND RENTS—REDEMPTION—WHEN VESTED IN TRUSTEE, ETC., WITHOUT POWER OF SALE

Rule Y70. Definitions.

a. *Ground Rent.*

As used in this Rule, "ground rent" shall include any ground rent, whether reserved by lease or sublease.

b. *Trustee.*

As used in this Rule, "trustee" shall include a trustee under a will, deed or other instrument or life tenant, vested or contingent, or the holder of a defeasible estate.

Rule Y71. When Petition May Be Brought.

A petition may be brought under this Rule whenever the title of a ground rent is vested in a trustee without a power of sale and said ground rent is now or hereafter becomes redeemable and the owner of the leasehold may desire to redeem the same.

Rule Y72. Venue.

The petition shall be filed in the Court of Equity in the county in which the land is situated upon which the rent is secured.

Rule Y73. Party.

a. *Who May Petition the Court.*

A petition under this Rule may be brought by the trustee or by the owner of the leasehold or subleasehold estate who is entitled to redeem.

b. *Necessary Party—By Representation.*

The trustee shall be made a party thereto, and it shall not be necessary for any of the remaindermen or other persons beneficially interested to be party to the proceedings.

Committee note.—The statutory source of this section was held constitutional in the case of Kingan Packing Ass'n v. Lloyd, 110 Md. 619, 73 A. 887.

Rule Y74. Petition—Contents.

The petition shall be verified and shall state:

(1) The location and description of the land.
(2) The date and place of record of the lease or sublease by which the reversion and rent was created.
(3) The amount of the annual rent and the amount for which the same is redeemable.
(4) That notice required by law or by the lease has been given by the owner of the leasehold or sublease.
(5) Such other facts as may be necessary to present the matter properly to the court.

Rule Y75. Service.

A copy of the petition shall be served on the trustee pursuant to Rule 104 (Service of Process—Generally) or Rule 105 (Process by Publication) whichever may apply.

Rule Y76. Bond.

Unless the trustee has previously given a bond which protects the redemption money or has been excused from giving bond by the instrument creating the trust, he shall give a bond as prescribed by Rule 1373 (Fiduciary Bond). Upon the deposit of the redemption money by the trustee in the manner provided by Rule 1375 (Fiduciary Estate Not Exceeding $2,000.00), the bond shall be released regardless of the amount of the entire estate or the amount of the redemption money.
(Proposed.)

Rule Y77. Conveyance.

a. *Order of Conveyance.*

The court may, after notice as required by Rule Y75 (Service) order the conveyance of the reversion or subreversion in such land by said trustee to the owner of the leasehold or subleasehold interest therein upon payment of the sum of money for which the said ground rent may be redeemable, together with a due portion of the accruing rent to the date of such payment.

b. *Trustee, Owner of Rent—Appointment of Trustee.*

Where a trustee is the owner of the reversion, the court may, instead of directing the trustee to execute such deed and receive the redemption money, appoint another trustee to execute the deed and to receive the redemption money.

Rule Y78. Accounting.

a. *Accounting and Investment by Trustee.*

The money received from the owner of the leasehold or subleasehold for the redemption of the ground rent shall be forthwith accounted for to the court by the trustee receiving it, and the court may order the investment thereof to the end that said money should be held in place and stead of the redeemed ground rent so as to enure in like manner to the benefit of persons entitled to said redeemed ground rent.

b. *Purchaser Not to See to Application of Proceeds.*

No purchaser shall be required to see to the application of the purchase money.

Rule Y79. Costs.

The court costs of the proceeding, including the expenses of obtaining a corporate bond, shall be paid out of the money received for the redemption of the ground rent.
(Art. 16, § 191.)

Cross reference.—For the procedure for the redemption of a ground rent vested in an infant, see Code, article 93, § 186.

SUBTITLE Z. HABEAS CORPUS

Rule Z40. Who May Issue.

Any judge (including a judge of the Court of Appeals) may grant the writ of habeas corpus and exercise jurisdiction in all matters pertaining thereto.
(Art. 42, § 1.)

Rule Z41. Who May Apply.

Any person confined or restrained in his lawful liberty within this State for any alleged offense or under any color or pretense whatsoever, or any person in his behalf, may apply for the writ, to the end that the cause of such confinement or restraint may be inquired into.

Rule Z42. Application—Form and Content.

a. *In General.*

An application, in all cases, shall state:

(1) That the person in whose behalf the writ is applied for is confined or restrained in his liberty.

(2) The place where such person is so confined or restrained, if known.

(3) The name and official capacity, if any, of the person by whom he is so confined or restrained, if known, and if not, a description sufficient to enable identification of the person.

b. *Where Confined.*

An application, when made by or on behalf of a person confined as a result of sentence for a criminal offense, or judgment in a juvenile proceeding or as a defective delinquent, shall be verified by the applicant and, in addition to meeting the requirements of section a of this Rule, shall also state:

(1) The cause, occasion or pretense of the confinement according to the best knowledge, information and belief of the applicant.

(2) Whether any previous application has been made with respect to such confinement, and if so, then as to each such previous application, to what court or judge made, the grounds thereof, and the determination made thereon, according to the best knowledge, information and belief of the applicant. If any other post-conviction legal proceedings have been had with respect to such confinement full particulars thereof shall be given.

(3) Whether an appeal or application for leave to appeal has been taken or made from any order made upon each such previous application, and from any order or judgment in such other legal proceedings, and if an appeal has been taken, or application has been made for leave to appeal, the determination made thereon, according to the best knowledge, information and belief of the applicant.

(4) The grounds for the issuance of the writ, if any, that were not shown upon any previous application.

Cross reference.—See Rule 5 (Definitions), section c (Affidavit—Oath—Affirmation); Code, article 31B, §§ 1-16 (Defective Delinquents).

Rule Z43. Insufficient Application—Judicial Alternatives.

Where the application fails to comply with the provisions of Rule Z42 (Application—Form and Content)

(1) it may be denied, or

(2) the judge may require it to be amended or otherwise amplified, or

(3) if a sufficient showing is made of probable illegal confinement or restraint, the judge may grant the writ notwithstanding such failure.

Rule Z44. When Writ Shall Issue—Exceptions.

Subject to the provisions of Rule Z43 (Insufficient Application) the judge considering the application shall forthwith grant the writ; provided, however, that the judge may refuse to grant the writ if it appears from the application, any documents annexed or public records that

(1) the person confined or restrained would not be entitled to any relief, or

(2) the application is made by or on behalf of a person confined as a result of sentence for a criminal offense or judgment in a juvenile proceeding or as a defective delinquent and the legality of the confinement was determined upon a prior application for the writ or other post-conviction, legal proceeding, and no new ground is shown sufficient to warrant issuance of the writ.

Rule Z45. To Whom Writ Directed—Before Whom Returnable.

The writ shall be directed to the person in whose custody the person confined or restrained shall be, returnable before the judge granting it or in his discretion before some other judge or court designated in the writ other than the judge who presided at the trial of the person confined. In exercising the discretion granted by this Rule, the judge to whom an application for the writ has been made shall consider the interests and convenience of all parties concerned including the State.

Rule Z46. Procedure Following Issuance of Writ.

a. *Service—Production of Person.*

The writ shall be served by delivering it to the person to whom it is directed. Such person shall forthwith or within such time (not exceeding three days after such service) as the judge shall direct, cause the person confined or restrained to be brought before the court or judge, according to the command of the writ, and shall likewise certify the reasons, if any, for his confinement or restraint.
(Art. 42, § 8.)

Cross reference.—See Rule 104 (Service of Process—Generally), and Rule 104 b (How Made).

b. *Release—Remand—Bail.*

Upon the production of the person confined or restrained the judge shall immediately inquire into the legality and propriety of his confinement or restraint, and if it shall appear that such person is confined or restrained without legal warrant or authority he shall immediately be released or discharged, or if the judge shall deem his confinement or restraint to be lawful and proper he shall be remanded, or admitted to bail pending trial or retrial as the case may be, if his offense be bailable.
(Art. 42, § 14.)

Cross reference.—See article 42, § 12, for penalty for failure to obey writ.

Rule Z47. Evasion of Writ—Procedure.

a. *Immediate Appearance May Be Ordered.*

On application for the writ, if it shall appear to the judge that there is probable cause for believing that the person charged with confining or restraining the person by or on whose behalf the application was made, is about to remove the person so confined or restrained for the purpose of evading the writ, or for other purpose, or that the person charged as aforesaid would evade or disobey such writ, then the judge shall insert in the writ a clause commanding the said person immediately to be and appear before the court or judge designated in the writ, together with the person so confined or restrained.
(Art. 42, § 9.)

b. *Immediate Execution by Sheriff.*

The sheriff to whom a writ, issued pursuant to section a of this Rule, is delivered shall immediately execute it and produce the person charged with the confinement or restraint, together with the person confined or restrained, before the court or judge according to the command of the writ.
(Art. 42, § 10.)

Cross reference.—See article 42, § 11, for penalty on sheriff for failure to act as provided in section b of this Rule; article 42, § 13, for penalty on officer or other person failing to furnish copy of warrant of commitment when demanded.

Rule Z48. Defenses—Pleading—Proof.

A person for whom the writ has been issued may controvert the truth of the certification required by section a of Rule Z46, and may plead any matter by which it may appear that there is not a sufficient legal cause for the confinement or restraint, and the judge on the application of any party shall direct the clerk to issue process for witnesses or writings, provided the judge shall be satisfied as to the materiality of the evidence sought.
(Art. 42, § 15.)

Rule Z49. Absence of Judge, Return to Another Court or Judge.

If the judge designated in the writ is unavailable when the person confined or restrained is produced, such person shall be produced before another judge of the same circuit, other than the judge who presided at the trial of the person confined.
(Art. 42, § 16.)

Committee note. — The purpose of this Rule is to prevent the custodian on his own motion from producing the person confined or restrained before any judge.

Rule Z50. Notice to State's Attorney.

Whenever a judge shall grant a writ to inquire into the legality and propriety of detention of a person who shall be confined in a penal institution after sentence for a criminal offense or judgment in a juvenile proceeding or as a defective delinquent in the Patuxent Institute, he shall instruct the clerk to give notice of the time and place of the hearing to the State's attorney for the county from which the person shall have been committed.
(Art. 42, § 20.)

Rule Z51. Errors on Face of Commitment—Correction of.

The judge to whom the return to the writ shall be made shall not discharge the person confined merely because of errors, omissions or irregularities which may appear on the face of the warrant or other written authority for commitment, but may direct that such warrant or other written authority shall be returned to the Justice of the Peace or court from whom or which it was received in order that such errors, omissions or irregularities may be corrected, and that, after correction, it be redelivered to the officer having custody of such person.
(Art. 42, § 21.)

Rule Z52. Examination of Records.

a. *Public Records.*

A judge to whom an application for the writ of habeas corpus has been made may make such examination of public records as seems desirable to determine whether the writ should be granted or denied.

b. *Court Records.*

In determining whether to issue the writ the facts disclosed by the court records considered by the judge shall be taken as conclusive, unless corrected by appropriate proceedings.
(Art. 42, § 5.)

Rule Z53. Memorandum by Judge.

Where an application for a writ is made by or on behalf of a person confined as a result of sentence for a criminal offense or judgment in a juvenile proceeding

or as a defective delinquent, the judge shall file a short memorandum setting forth the grounds of the application, the questions involved, and the reasons for the action taken thereon. A copy of the memorandum shall be sent to the Administrative Office of the Courts and to the applicant.
(Art. 42, § 5.)

Rule Z54. Discretion to Refer Application to Another Court or Judge.

A judge to whom an application for the writ has been made may, in his discretion, refer the application to any court or judge in the judicial circuit in which the person confined was convicted, without taking other action thereon, provided, however, that such an application shall not be referred to any judge who sat at the trial at which the person was convicted, except with the written consent of the applicant or the person confined. A court or judge to whom an application for the writ has been referred shall act thereupon forthwith, and shall have no power to further refer or transfer the application. In exercising the discretion granted by this Rule, the judge to whom an application for the writ has been made shall consider the interests and convenience of all parties concerned including the State.
(Proposed.)

Rule Z55. Alternative Remedy—Post Conviction Procedure.

a. *Determination by Judge.*

A judge may determine that an application for a writ of habeas corpus, by or on behalf of a person confined as a result of sentence for a criminal offense or judgment in a juvenile proceeding or as a defective delinquent, should be entertained as a proceeding under the Post Conviction Procedure Act unless it appears that such remedy is inadequate or ineffective to test the legality of the confinement.

Cross reference.—See article 27, §§ 645A to 645J (Post Conviction Procedure Act).

b. *Consent Required.*

If the judge determines that the application for the writ should be entertained as a proceeding under the Post Conviction Procedure Act, he shall with the written consent of the applicant, pass an order to that effect and shall direct the clerk of court to transmit the application, a certified copy of the order, and any other pertinent papers to the court in which the conviction took place. Upon such transfer the provisions of the Post Conviction Procedure Act, to the extent applicable, shall govern the proceeding.

c. *Where No Consent.*

In the event the applicant does not consent as provided in section b of this Rule, the application for the writ shall be considered pursuant to the provisions of Rules Z40 to Z54 inclusive.

Explanatory note.—Rule Z55 is substantially the language of Article 27, section 645B (a) (b) (Laws 1958, Ch. 44) Note, however, that section c does not conform to the language of the statute, which reads: "In the event that the applicant does not consent to the passage of such order, the application shall be heard as a habeas corpus application in the court in which it was filed."

SUBTITLE BA. HUSBAND AND WIFE—ABUSE OF CREDIT

Rule BA70. Petition.

A married man who shall believe that the pledging of his credit by his wife for necessaries is being abused may petition the equity court of the county in which he resides, naming his wife as defendant, for an order prohibiting her from pledging his credit.

Explanatory note.—The statutory source states that a summons shall be issued to the wife requiring her to answer within the time fixed by the court. This has been omitted as being covered by the general rules.

Rule BA71. Counsel to Be Provided Wife.

The wife shall be entitled to counsel, whose services shall be paid for by the petitioner in such amount as may be fixed by the court.

Rule BA72. Decree—Conditions.

If, after hearing, the court is satisfied that the wife is abusing the petitioner's credit, taking into consideration the wife's station in life and the means of the petitioner, it shall pass an appropriate order.

Rule BA73. Rescission or Modification.

Either party may apply to the court, at any time, for a rescission or modification of the order.

Rule BA74. Notice.

Notice of the passage of an order under these Rules may be given by registered mail.

(Art. 16, §§ 40-42.)

Cross references.—As to effect of notice, see Code, article 16, §§ 40, 41. Code, article 45, § 21, provides that a husband is liable for debts validly contracted by his wife upon his credit or as his agent as at common law.

Committee note. — These Rules are intended to supersede that part of Art. 16, Sec. 42, which provides that the hearing and all pleadings in this type of action be private insofar as may be lawful.

SUBTITLE BB. INJUNCTION

(1958 Md. Rule 1195)

(1958 MD. RULE 1195)

SUBTITLE BC. LEASES—RENEWAL OF
(1958 Md. Rule 1280)

(1958 MD. RULE 1280)

SUBTITLE BD. LIS PENDENS

Rule BD1. Creation.

In any action to which the doctrine of lis pendens is applicable, service of process shall not be necessary to create lis pendens.

Cross references. — For present Code provisions relating to lis pendens, see Code, article 16, § 100. Generally as to lis pendens, see American Law of Property, Vol. III, § 13.12, Vol. IV, § 17.11; Tiffany, Real Property, 3rd Ed., §§ 1294-1298; Witsie on Mortgage Foreclosure, 5th Ed., §§ 446-447; Frank, "Title to Real and Leasehold Estates", pg. 289 and Corey v. Carback, 201 Md. 389, 403-404, 94 A. (2d) 629.

Committee note.—It is the express intention of Lis Pendens Rule to overrule the existing case law, which holds that the mere filing of the original pleading does not create lis pendens, but that there must also be service of process. See 63 Md. 503, 511, Sanders v. McDonald; 72 Md. 9, 17, 18 A. 907, Murguiondo v. Hoover; 162 Md. 609, 616, 161 A. 173, Watkins v. State; Tiffany, Real Property, 2d Ed. p. 2269; 34 Am. Jur. p. 383.

Rule BD2. Constructive Notice in Another County.

The pendency in a county of an action affecting title to real or leasehold property located in another county shall not be constructive notice in such other county until a certified copy of the pleading giving rise to the *lis pendens* is filed with the clerk in such other county in the same manner as an action brought in that county.

Cross reference. — Proposed Rule 621 (Judgments in Actions Affecting Lands in More Than One County).

Rule BD3. Termination of Lis Pendens.

Upon the application of any person in interest and for good cause shown, the court, in a county other than the county where the action was originally brought, may enter an order terminating the lis pendens in that county.

Rule BD4. Costs.

Costs of the proceedings pursuant to this Rule, including proceedings in a county other than the county where the action was originally brought, shall be taxable as costs in the original action.

SUBTITLE BE. MANDAMUS

(1958 Md. Rule 1240)

(1958 MD. RULE 1240)

SUBTITLE BF. MANDAMUS AND INJUNCTION AS ANCILLARY RELIEF IN AN ACTION AT LAW

(1958 Md. Rule 1250)

(1958 MD. RULE 1250)

SUBTITLE BG. MECHANICS' LIEN—ENFORCEMENT

BG70. Definition.

As used in this subtitle, "mechanics' lien" shall mean a lien granted pursuant to Code, article 63, sections 1, 22 or 34.
(Art. 63, §§ 1, 22 and 34.)

Cross references.—Sections 1, 22 and 34 of article 63 pertain respectively to (i) buildings, etc., (ii) certain machines, wharfs and bridges, and (iii) boats and vessels.

As to notice of intention to file claim of lien, see Code, article 63, §§ 10-12.

As to recording and docketing claim of lien, see Code, article 63, §§ 17-19, 35-36.

BG71. Commencement of Action.

a. *Venue.*

An action to enforce a mechanics' lien shall be filed in an equity court of the county where the lien claim is properly recorded.
(Art. 63, §§ 24, 39.)

Cross reference.—See article 63, §§ 17-19 and 35-36, with reference to recording and docketing of lien claim.

b. *How Commenced.*

The action shall be commenced by the filing of a bill to enforce the mechanics' lien, together with the lien claim, or a certified copy thereof, as an exhibit.
(Art. 63, §§ 24, 39.)

Explanatory note.—Article 63, Section 24 provides in part that "The proceedings to recover the amount of any lien under this Article . . . shall be by bill in equity and the same proceedings shall be had as used by the courts of equity to enforce other liens . . . ."

With reference to Section b, although the statutory source does not require that the lien claim be made an exhibit, this appears to be the uniform practice. In this regard, see Parkway Estates v. Burnham, 210 Md. 64, 122 A. (2d) 326, sustaining the overruling of a demurrer to the bill, where it was contended that the bill did not allege compliance with statutory requirements as to notice; the court holding that the bill, when read in conjunction with the lien claim (which was filed as an exhibit), showed compliance.

c. *Parties.*

1. Necessary Party Defendant.

An action to enforce a mechanics' lien shall be brought against each person having an interest of record in the property against which the lien is claimed, including any person having a recorded mechanics' lien claim against such property; however, the plaintiff need not join any person whose interest in the property is superior to the plaintiff's mechanics' lien.
(Proposed.)

2. Proper Party Defendant.

The plaintiff may, but is not required to, join any other person who is or may

be entitled to record a mechanics' lien claim against the property or who may otherwise be entitled to share in the proceeds of the sale.
(Proposed.)

Explanatory note.—With respect to subsection 1, see Ortwine v. Caskey, 43 Md. 134 (assignee of record title prior to filing of action held to be necessary party) and Shryock v. Hensel, 95 Md. 614, 53 A. 412 (holding that claimant entitled to rely on record title).

The requirement in subsection 1 that all persons having recorded mechanics' lien claims be joined as defendants represents a change in existing law. See Bounds v. Nuttle, 181 Md. 400, 30 A. (2d) 263, and Kelly v. Gilbert, 78 Md. 431, 28 A. 274, holding that such claimants need not be joined under present practice; if they are not joined and do not intervene, they can nevertheless file their claims to the proceeds with the auditor after sale. However, if a lien claimant *is* joined and refuses to file his claim, he loses all right to enforce his lien against the property and is left with only an *in personam* claim. Kelly v. Gilbert, *ibid.* The Committee felt that it was desirable to require joinder of all persons having lien claims of record inasmuch as this eliminates any question as to whether such persons will have notice of the proceedings, and secondly, because the effect of joinder will be to require them to prove their own claim and/or dispute the plaintiff's claim in the first instance at the hearing before sale, rather than permit them to wait and do so by filing with the auditor after sale.

With respect to subsection 2, see Caltrider v. Isberg, 148 Md. 657, 130 A. 53, holding that when the action is brought by a subcontractor, the general contractor is a proper, but not a necessary, party.

3. Claim by Subcontractor or Materialman.

Any person to whom the plaintiff is indebted for work done or materials furnished for or about the property involved and who is not joined as a defendant, may assert his claim at any time prior to the statement of the auditor's account distributing the proceeds of sale, by intervention or by filing a petition for payment out of the proceeds.
(Art. 63, §§ 20, 24, 25.)

Cross reference. — See Code, article 63, § 20, which provides in part that a subcontractor or materialman to whom the contractor or builder is indebted shall have the benefit of the lien claim filed by the contractor or builder.

Explanatory note.—Subsection 3 makes the following changes in the statutory source:

1. The statute does not by express terms limit the claimants to those who have furnished labor or materials for the same property but this would seem to be implicit in view of the fact that it provides that the claimant shall also "have the benefit of the lien;"

2. The statute only provides for the filing of a petition asserting a claim for the amount due, while the Rule also provides for intervention as a matter of right; and

3. The Rule makes it clear that the claim can be filed any time prior to the statement of the account. Kelly v. Gilbert, 78 Md. 431, 28 A. 274.

BG72. Amendment.

The court shall freely permit the pleadings in an action to enforce a mechanics' lien to be amended at any time except that—

(1) After the expiration of the period within which notice of the lien claim must be given, or the lien must be recorded if notice is not required, no amendment shall be permitted which will increase the amount of the claim; and

(2) After the expiration of the period within which the lien claim must be recorded, no amendment shall be permitted which will materially alter the description of the property against which the lien claim was recorded.

(Cf. art. 63, § 32.)

Cross references. — As to time within which lien claim must be filed, see Code, article 63, § 23.

As to amendment of pleadings generally, see Rule 320 (Amendment).

Explanatory note. — The intent of the

statutory source is to permit a much more liberal right of amendment than in ordinary cases. Wilhelm v. Roe, 158 Md. 615, 149 A. 438 (Amendment permitted to bring in real owner). See also Real Estate & Improvement Co. v. Phillips, 90 Md. 515, 525, 45 A. 174 where the court stated that: "It is difficult to imagine any more extensive power of amendment than that conferred" by the Act. The statutory language has been expanded to express the effect of the decisions.

The lone statutory exception is that the "amount of the claim or lien shall not in any case be enlarged". This has been expanded to make it clear that this limitation applies only after the time for recording the lien claim has expired and to codify the decision of Gault v. Wittman, 34 Md. 135, prohibiting an amendment which alters the property described in the lien claim after the time for recording had expired.

BG73. Sale.

a. *Decree.*

1. Form.

If the court finds for the plaintiff, it shall decree that the property be sold unless the amount found to be due is paid on or before a date specified in the decree, which date shall not be more than thirty days from the date of the decree.

Explanatory note.—This is intended to codify the holding of Smith v. Shaffer, 46 Md. 573, 579 which held that although the proceedings were solely *in rem* and that there could be no personal liability established as a result of the action, a decree for sale conditional upon non-payment by a specified date, would "fully satisfy the requirements of the act . . . and at the same time be full equity to all the parties concerned".

2. Interest.

Interest shall be allowed from the date on which the lien claim was recorded unless interest from an earlier date shall be ordered by court.
(Proposed.)

Explanatory note.—This subsection, as recommended by the Committee, represents a change in existing law. In recent cases the Court of Appeals has uniformly allowed interest from the date the lien is recorded (Kolker v. Shure, 209 Md. 290, 121 A. (2d) 223; Johnson v. Metcalfe, 209 Md. 537, 539, 121 A. (2d) 825) and in the most recent case has stated as an apparently inflexible rule that interest can be allowed only from such date. Eastover Stores, Inc. v. Minnix, 219 Md. 658, 677, 150 A. (2d) 884.

However in an early case, interest was allowed from an earlier date where the evidence so warranted. In Smith v. Shaffer, 50 Md. 132, interest was allowed from the date the last article was sold. The Committee believe it is desirable to permit the trial judge, in a proper case, to allow interest to run from an earlier date. As for example, where there is an express contract provision for interest after default.

The proposed rule is to be contrasted to Rule 642 (Interest on Judgment) which provides for interest from the date the judgment is recorded.

b. *Appointment of Trustee—Procedure.*

A trustee shall be appointed to make such sale pursuant to Rule 1301 (Judicial Sales).
(Art. 63, §§ 24, 39.)

Cross reference. — For provision for pro-rata payment of claims where proceeds of sale are insufficient to pay all claims in full, see Code, article 63, § 25.

Explanatory note.—Article 63, Section 24, provides that "the court shall decree a sale and appoint a trustee to make sale thereof . . .". This statute is already cross-referenced under Rule 1301 as one type of sale which the Rule is intended to cover. Section b 1 of Rule 1301 states that the "sale may be decreed at any stage in the proceeding as justice may require". This was derived from former Article 16, Section 161, which provided the right to order sale before final decree under exceptional circumstances. This right was exercised by the court in a mechanics' lien action in Kelly v. Gilbert, 78 Md. 431, 28 A. 274, although the Court of Appeals held that the circumstances involved did not justify such action.

Unlike the ordinary foreclosure action under Rule 1391 (Mortgage—Foreclosure) in a mechanics' lien action there can be no deficiency decree or personal judgment. Gaybis v. Palm, 201 Md. 78, 93 A. (2d) 269; Weinberg v. Fanning, 208 Md. 567, 119 A. (2d) 383. However, Article 63, Section 33, provides that nothing contained in the Mechanics' Lien Article shall be construed as affecting the right of any person to bring a personal action for any debt arising out of work done or materials furnished against the owner or any other person liable therefor.

BG74. Payment of Mechanics' Lien Claim—Sale Under Other Lien or Court Order.

a. *Apportionment of Proceeds.*

If all or any part of property against which a mechanics' lien claim is recorded shall be sold under judgment, foreclosure, execution or any other court order or by any trustee appointed by a court, before the extent of the mechanics' lien is determined, the court from which such execution issued, or which entered such judgment, passed such order or appointed such trustee, may determine the respective rights of the persons entitled to share in the proceeds of sale.

b. *Referral to Auditor.*

The court may refer the proceedings to an auditor pursuant to Rule 595 (Auditor) to state an account.

(Art. 63, § 16.)

Cross references.—See Code, article 63, § 15, which prefers mechanics' liens to all liens attaching subsequent to the commencement of construction as well as all non-recorded prior liens.

For procedure for sale of property pursuant to process or court order, see Rules 1391 (Mortgage—Foreclosure); 1301 (Judicial Sales); 1140 u (Attachment on Original Process—Sale of Attached Property); BJ70-BJ73 (Partition); 1139 (Attachment on Judgment); 622 (Execution).

Explanatory note. — The statute also provides that the court ". . . upon application of any of the parties, may direct an issue to try the facts and may decree distribution accordingly." This has been omitted from the Rule in view of the Committee's decision to abolish transfer of issues in such cases. See proposed Rule 517 (Advisory Jury Verdict Abolished).

BG75. Release of Lien.

a. *Proceeding to Void or Compel Enforcement.*

The owner of property against which a mechanics' lien claim has been recorded. or any other person interested therein, may file a petition in the court in which such lien claim is recorded to compel the claimant to prove the validity of the lien or have it declared void.

(Art. 63, § 28.)

Cross reference.—For duration of lien and provision for stay of lien by filing of action referred to in this Rule, see Code, article 63, § 28.

Committee note.—Since a mechanics' lien action is an *in rem* proceeding (Gaybis v. Palm, 201 Md. 78, 93 A. (2d) 269; Weinberg v. Fanning, 208 Md. 567, 119 A. (2d) 383), the lien claimant may be proceeded against under the applicable provisions of Rule 104 h (Service of Process—Generally—Constructive Service—Resident) or Rule 105 (Process by Publication) or Rule 111 (Land Action).

Explanatory note.—The statute provides that "in case the lien claimant or his assigns may be nonresidents . . . or may be persons who may be proceeded against as such nonresidents, notice may be given . . . by publication as in other equity cases . . .". It is proposed to recommend deletion of this portion of the statute as already being covered by Rules 104, 105 and 111; the Committee Note has been inserted to call attention to the fact that the action is *in rem* and to avoid any possible conclusion that the eventual deletion of the statutory reference to publication was intended to eliminate publication in such actions.

b. *Bond.*

1. Filing—Amount—Condition.

At any time after the recording of a mechanics' lien claim, whether or not an action has been brought to enforce the lien, the owner of the property involved, or any other person interested therein, may file a petition, in the court in which such lien claim is recorded, to have the property released from the lien, together with a bond in the form prescribed by Rules H1 to H8 (Bond) and in an amount sufficient to pay the sum claimed by the lien claimant, with interest and costs, and conditioned on payment of any judgment which may be rendered in favor of the claimant in any action to enforce such mechanics' lien. In lieu of filing bond the petitioner may deposit money in an amount equal to the amount of the bond which would otherwise be required, pursuant to Rule H3 (Bond).

2. Notice to Claimant.

If such petition is filed before the lien claimant has brought an action to enforce the mechanics' lien, the petition shall be docketed and served in the same manner as an original proceeding. If such petition is filed after the lien claimant has brought an action to enforce the lien, the petition shall be filed in such action and served pursuant to section c of Rule 306 (Service of Pleading or Notice).

Cross reference.—See with reference to service of original pleading Rules 104 (Service of Process—Generally); 105 (Process by Publication); 106 (Service of Process—Corporation) and 111 (Land Action).

3. Approval—Release from Lien.

Unless the lien claimant shows cause within ten days from the date of service of the petition why the bond or deposit of money should not be approved, the court, on motion of the petitioner, shall pass an order approving such bond or deposit, and releasing the property from the lien. If the claimant shows cause within such ten day period why the bond or deposit should not be approved, the issue shall be determined by the court.

(Art. 63, §§ 26, 27, 29.)

Explanatory note.—The foregoing bond provisions represent an attempt to draft a relatively simple and workable rule instead of the complicated and seemingly contradictory statutory provisions which now provide for three separate types of proceedings:

(1) Payment into court of the amount claimed, with interest and costs;

(2) Filing of a written undertaking to pay the judgment, with two or more sureties; and

(3) Filing of a bond in an amount fifty per cent greater than the amount of the claim.

In lieu of the provision in Article 63, Section 29, that there shall be "personal service upon the lien claimant if a resident, and by registered mail to the last known address of said claimant if a nonresident . . .", the Committee has substituted the general Rule provisions for service of process.

c. *Entry of Satisfaction.*

1. By Claimant.

If the amount of a mechanics' lien claim or judgment thereon shall be paid or otherwise satisfied, the claimant or his successor in interest, at the request of the owner of the property involved, or any other person interested therein, and upon payment of costs, shall file an order of satisfaction of the lien and judgment, if any, in the court where the lien claim was recorded or judgment rendered.

Cross reference. — Code, article 63, § 30, provides that such order of satisfaction shall "forever discharge and release" the lien.

2. By Court Order.

If the claimant or his successor in interest fails to file such order of satisfaction, the court may, upon petition by the owner of the property, or any other person interested therein, after such notice as it may direct to the lien claimant and proof that the amount of the lien has been satisfied, and costs paid, pass

an order releasing and discharging the lien, and awarding the petitioner a reasonable counsel fee and costs.
(Art. 63, §§ 30, 31.)

Explanatory note.—Subsection 1 is substantially the same as the statutory source (Section 30) except that provision has also been made for satisfaction of the judgment. Subsection 2 is new and has no counterpart in the statute.

Section 31 of Art. 63 provides that if the lienor does not enter satisfaction within sixty days after request, he shall pay the "party aggrieved any sum not exceeding one-half of the amount of such claim . . .". The Committee proposes to recommend that this Section be repealed.

BG76. Designation of Boundaries.

a. *Petition—Who May File.*

After the commencement of construction of any improvement upon real property which might be subject to a claim for a mechanics' lien, the owner of such property or any other person interested therein, including anyone who has or might assert a mechanics' lien against such property, by reason of such construction, may petition a court of equity of the county where such property is located to designate the boundaries thereof pursuant to this Rule.

Cross reference.—See Code, article 63, § 5, which gives the owner the right to file a designation of the boundaries prior to the commencement of construction which designation is conclusive on all parties concerned.

b. *Notice.*

Notice of the filing of the petition shall be served in such manner as the court shall direct on the owner of the property, all persons who have recorded mechanics' lien claims against such property, and any other person designated by the court.

c. *Surveyor.*

1. Appointment.

The court shall appoint a surveyor who shall make a report to the court in which he shall determine and describe the boundaries of such property in such manner as to include within the boundaries so designated so much of the property as is necessary to the use of the improvement thereon for the purpose for which it is designed or reasonably adaptable.

Cross reference.—See Code, article 63, § 4, which provides that a mechanics' lien shall extend to so much of the land adjacent to a building "as may be necessary for the ordinary and useful purposes of such building . . .".

2. Report—Recording.

A copy of the surveyor's report shall be furnished to each person upon whom the petition referred to in section a of this Rule is required to be served. The report, if approved by the court, shall be filed and recorded in the "Mechanics' Lien Docket" maintained pursuant to Code, article 63, section 18.

Cross reference. — For binding effect of such designation, see Code, article 63, § 7.

d. *Stay Pending Survey.*

If an action to enforce a mechanics' lien against real property is pending at the time a petition to designate the boundaries of such property is filed pursuant to this Rule, the court may, on application of any person having a right to file the petition under section a of this Rule, stay the enforcement of the mechanics' lien until such designation is made.
(Art. 63, §§ 6, 7, 8.)

Explanatory note.—The object of these provisions of the Code (Secs. 6, 7, 8) is to permit the designation of the boundaries of property both before and pending proceedings for a mechanics' lien. Under Section 5, the owner has the right, prior

to construction, to file a designation of boundaries which is notice to all persons who may claim the lien and, if he fails to take advantage of this right, he cannot avoid the lien merely because too much land is claimed. Caltrider v. Isberg, 148 Md. 657, 130 A. 53; Fulton v. Parlett, 104 Md. 62, 64 A. 58.

No cases have been found which discuss in detail the procedure to be followed where the designation is made *after* the commencement of construction. The cited Code sections merely provide for the right to petition for such designation, the appointment of a surveyor by the court and the surveyor's report, which, if approved by the court, is made "conclusive upon all persons concerned." In Filston Farm v. Henderson, 106 Md. 335, 373, 67 A. 228, it was stated that the quoted portion of the statute had "special reference to persons acquiring liens subsequent to commencement of construction or previously acquired but recorded later".

The Committee believes that, once construction has commenced, the statute does not contemplate *ex parte* action inasmuch as a potential lien claimant should be able to examine and rely upon the status of the records prior to construction. Obviously however, it would be impossible to notify all potential lienors of the filing of the petition. The Committee believes that section b and the first sentence of subsection c 2 (both of which have no counterpart in the statute) are sufficiently elastic to enable the court to protect the rights of such parties.

Special mention should also be made of proposed subsection c 1. Article 63, Section 7, upon which this subsection is based, provides that the report shall "designate and describe . . . the limits and extent of grounds necessary for the convenient use of such building for the purpose for which it was designed . . .". In the Rule the words, "or reasonably adaptable" have been inserted after "designed" to codify the decision in Filston Farm v. Henderson, 106 Md. 335, 374, 67 A. 228 where the court pointed out that because of the death of the owner the building would probably never be used for the purpose for which it was "designed" by him.

ENFORCEMENT OF LIEN FOR STORAGE OF OR REPAIRS TO MOTOR VEHICLE OR AIRCRAFT

Sections 41-45 of Article 63 deal with the subject of garagemens' liens for storage or repairs to motor vehicles. These sections are a mixture of substantive and procedural law in that they set forth the right to the lien, the relative priorities of the garageman and other lienors, the right to sell the property at public auction if the amount due is not paid within a specified time, etc., as well as certain procedural provisions dealing with actions which may be brought by the garageman or the owner.

Substantially the same provisions are contained in Article 1A, Section 24, of the Code, which is subdivided into five lengthy subsections, and deals with liens for repairs to or storage of aircraft.

The procedural portions of these Code provisions are as follows:

Article 63, Section 42 and Article 1A, Section 24 (b)

—provide that the owner of the aircraft or motor vehicle can institute suit to determine the proper amount due, which operates as a stay of execution; the owner may also repossess the property by filing a corporate bond in double the amount of the claim, which likewise operates as a stay of execution, provided suit is instituted within six months after the filing of the bond; if the defendant is returned *non est*, he may be served by publication.

Article 63, Section 45 and Article 1A, Section 24 (e)

—provide that if the owner replevins the property and the defendant moves for a writ of *retorno habendo* based only on his claim to the lien, the court shall refuse to return the property until judgment is rendered determining the amount due; the court is given the right to allow a reasonable fee to the defendant's counsel; the burden of proof is upon the defendant to establish his right to the lien to the same extent as if he were a plaintiff in an action to secure a judgment on an open account.

The Committee believes that almost all of the foregoing provisions can and should be repealed as being superseded by Rule 1160 (Replevin). There does not appear to be any reason to continue the practice of permitting the owner to recover the property by filing bond under Article 63, Section 42 or Article 1A, Section 24 (b), when the replevin procedure in Rule 1160 is available and serves the same purpose. The only provisions of the statutes which appear in any way to be at variance with the ordinary replevin procedure are as follows:

1. The property is not returned to the lien claimant under a writ of *retorno habendo* until final judgment;

2. The court can allow a counsel fee to the defendant's counsel; and

3. The burden of proof is upon the

defendant to establish his right to the lien.

The Committee proposes to recommend that Article 63, Sections 42 and 45 be repealed and reenacted as one section to read as follows:

"Should the owner dispute the amount of the charge, or any part thereof, for which the lien is claimed as aforesaid, such dispute may be determined by appropriate legal proceedings, and the institution of any such legal proceedings shall operate as a stay of execution under said lien until the amount thereof shall have been judicially determined, or the owner of such motor vehicle shall have the right to repossess himself of his said motor vehicle by filing an action of replevin pursuant to Maryland Rule 1160 (Replevin); if the defendant in such action moves the court for a writ of *retorno habendo,* and it shall appear to the court that the defendant's claim to the right of possession of such motor vehicle or part thereof is based on any lien or right to hold the property replevied as security for any sum of money claimed to be due as distinguished from a claim of ownership of the property replevied, the court shall refuse to order a return of the property replevied to the defendant until final judgment in the replevin action; in such action the court shall have the right to allow a reasonable counsel fee to the defendant's counsel. The burden of proof in such action shall be upon the defendant to establish his claim or lien to the same extent as if he were a plaintiff in an action to secure a judgment on an open account."

It is also recommended that the same changes be made with respect to subsections 24 (b) and (e) of Article 1A which deals with liens on aircraft.

The effect of the repeal and reenactment of these sections as suggested above, would be to preserve all of the special features of replevin proceedings dealing with properties which are subject to these types of lien claims, at the same time eliminating those provisions of the statutes which are already covered by the Replevin Rule, and to also eliminate the statutory procedure for recovery of the property by filing bond without bringing an action of replevin.

SUBTITLE BH. NAME—CHANGE OF
(1958 Md. Rule 1185)

(1958 MD. RULE 1185)

SUBTITLE BJ. PARTITION

Rule BJ70. How Commenced.

An action for the partition of real or personal property or for the sale of same in lieu of partition shall be commenced by the filing of a bill in equity. If a sale in lieu of partition is desired, the bill shall so state.

Committee note.—It is the intention that the Partition Rule cover all actions for partition or for sale in lieu of partition, including procedures under Article 16, Sections 154 to 159, and Article 46, Sections 8 to 27.

Rule BJ71. Sale.

If the court shall determine that a sale rather than partition is proper, such sale shall be conducted in the manner provided by Rule 1301 (Judicial Sales) (BR1-BR6 (Sales—Judicial)).

Rule BJ72. Commissioners.

If the court shall determine that partition is proper it shall so order, and unless all parties expressly waive the appointment of commissioners, shall commission not more than 5 nor less than 3 disinterested persons to value and divide the property in question. Upon request by the court each party shall suggest disinterested persons willing to serve as commissioners. The commissioners shall make oath before some person authorized to administer an oath that they will faithfully perform their duties under such commission. The order appointing the commissioners shall fix a day on or before which the report of the commissioner shall be returned to the court.

Rule BJ73. Report of Commissioners.

a. *Service.*

The report of the commissioners shall be served pursuant to Rule 306 (Service of Pleading or Notice) on all parties who have appeared in the action.

b. *Exceptions.*

A party to the action may file exceptions to the same within fifteen days, or such additional time as the court may order, after the filing of the same.

Cross references.—See Code, article 17, § 31 (Record of proceedings upon request although title to land not involved). See also Rule 619b (Recording of Judgment—Where Title to Real Estate Involved); proposed Rule 621 (Judgments in Actions Affecting Lands in More than One County).

SUBTITLE BK. POST CONVICTION PROCEDURE

Rule BK40. How Commenced—Venue.

A proceeding under the Uniform Post Conviction Procedure Act shall be

commenced by the filing of a verified petition in a court having criminal jurisdiction in the county where the conviction took place.
(Art. 27, § 645C.)

Cross references.—For scope, res adjudicata and waiver of procedure and persons for whom available, see article 27, §§ 645A and 645H. See also Rule 255 (Habeas Corpus — Alternative Remedy—Post Conviction Procedure), the statutory source of which is article 27, § 645B (Writs of habeas corpus).

Rule BK41. Petition.

a. *Content.*

The petition shall state:

(1) The name of the petitioner and the place of his confinement.
(2) The place and date of entry of judgment and the sentence imposed.
(3) The grounds upon which the petition is based.

Cross reference.—For waiver of grounds not raised in original or amended petition, see article 27, § 645H.

(4) The relief sought.
(5) A description of all previous proceedings, including appeals and motions for new trial which have been taken by petitioner to secure relief from the conviction or sentence, the grounds for such proceedings and the determination made thereon.

(Art. 27, §§ 645C and 645D.)

b. *Verification.*

1. Facts.

Facts within the personal knowledge of the petitioner shall be stated separately from other allegations of facts.

2. Papers.

All papers, documents, affidavits, records and other written evidence supporting the allegations of the petition shall be attached thereto and verified by the petitioner as authentic. If any such written evidence is not so attached, such omission shall be explained.
(Art. 27, §§ 645C and 645D.)

c. *Without Argument or Citation.*

The petition shall not include argument or citation of authority in support thereof.
(Art. 27, § 645D.)

d. *Amendment.*

Amendment of the petition shall be freely allowed in order to do substantial justice.

Cross references.—See Hobbs v. Warden, 219 Md. 684, 148 A. (2d) 380, stating that since under the Act it is contemplated that the proceeding may be involved only once, it is important that the applicant, if indigent and without counsel, shall have an opportunity through counsel to present any ground of alleged error not previously and finally litigated.

For amendment generally, see Rule 320 (Amendment).

e. *Docketing.*

Upon receipt of a petition seeking relief under the Uniform Post Conviction Procedure Act, the clerk of the court in which the petition is filed shall immediately docket the petition and promptly notify the court and the State's attorney.
(Art. 27, § 645C.)

Rule BK42. Indigency—Appointment of Counsel.

The petition may allege that the petitioner is unable to pay the costs of the proceeding or to employ counsel. If the court is satisfied that the allegation is true, it shall order that the petitioner proceed as an indigent, and appoint counsel for him.
(Art. 27, § 645E.)

Cross references.—See Rule BK41 (Petition—Content—Verification, etc.). See also Hobbs v. Warden, 219 Md. 684, 148 A. (2d) 380 holding that the statutory source (article 27, § 645E) of this Rule requires the appointment of counsel in every case in which the trial court is satisfied that the petitioner is in fact unable to employ counsel. See also Byrd v. Warden, 219 Md. 681, 147 A. (2d) 701; Medley v. Warden, 219 Md. 688, 149 A. (2d) 915.

Note.—There is no specific provision in the Act for payment of the costs of the proceeding by any one except in cases where the Court of Appeals grants leave to appeal and finds that the petitioner is unable to pay the costs of the review. In such cases, the Court of Appeals shall order the costs paid by the political subdivision where the conviction took place.

Rule BK43. Answer—Other Pleadings.

a. *State's Attorney's Answer.*

The State's attorney shall respond by answer or motion, within 15 days of the docketing of the petition, or within such further time as the court may order.
(Art. 27, § 645F.)

b. *Other Pleadings—Withdrawal.*

No other pleadings shall be filed except as ordered by the court. The court may grant permission to withdraw the petition at any time and may make any other order as to the pleadings as justice may require.
(Art. 27, § 645F.)

Cross references.—For amendment generally, see Rule 320 (Amendment). For enlargement or shortening of time for pleading, see Rule 309 (Time—Extension or Shortening).

Rule BK44. Hearing.

a. *Place.*

A hearing on the petition shall be held in the court in which the petition is properly filed.
(Art. 27, § 645G.)

Cross reference.—For place of filing petition, see Rule BK40 (How Commenced —Venue).

b. *Time.*

The hearing shall be held as soon as possible after all pleadings required or allowed by this Rule or the court are filed.
(Proposed.)

c. *Judge.*

The hearing may be before any judge except a judge who sat at the trial at which the petitioner was convicted, unless the petitioner assents to a hearing before such judge.
(Art. 27, § 645G.)

d. *Evidence.*

The court may receive proof by affidavit or deposition and may also take oral testimony or other evidence, where justice so requires.
(Cf. art. 27, § 645G.)

e. *Presence of Petitioner.*

The court may order the attendance of the petitioner at the hearing.
(Art. 27, § 645G.)

Cross reference.—See Plump and Kye v. Warden, 220 Md. 662, 153 A. (2d) 269, holding that the statutory source (§ 645G) of this section does not require the petitioner to be present at the hearing of his petition, though the Court may so order.

f. *Record of Evidence.*

Evidence, if any, introduced at the hearing shall be recorded.
(Proposed.)

Rule BK45. Order of Court.

a. *Scope.*

After the hearing the court shall make such order on the petition as justice may require. In the event the order shall be in favor of the petitioner, the court may also provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.
(Art. 27, § 645G.)

b. *Memorandum.*

The order shall include or be accompanied by a short memorandum of the grounds of the petition, the questions, including specifically the federal and State rights involved, and the reasons for the action taken thereon.
(Art. 27, § 645G.)

c. *Finality.*

Such order shall constitute a final judgment for purposes of review.
(Art. 27, § 645G.)

d. *Copy to Petitioner and Administrative Office.*

A copy of the order and memorandum shall be sent to the petitioner, to petitioner's counsel of record and to the Administrative Office of the Courts.
(Proposed.)

Rule BK46. Application for Leave to Appeal.

a. *How Made—Time for Filing.*

Application for leave to appeal to the Court of Appeals shall be made pursuant to Rule 811 (How Appeal to Be Taken) and shall be filed within thirty days from the passage of the order appealed from.
(Proposed; art. 27, § 645-I.)

Cross references. — For right to make application for leave to appeal, see article 27, § 645-I. See also Rule 893 (Post Conviction Records—Duty of Clerks). As to waiver of costs in post conviction cases, see Rule 883 a (Waiver of Costs).

b. *Content of Application.*

The application shall contain a brief statement of the reasons why the order should be reversed or modified.
(Proposed.)

Cross reference.—See Rule 830 a 1 (Filing of Briefs) providing that in lieu of a brief, the applicant may rely on the statement in his application for leave to appeal of the reasons why the order should be reversed.

c. *Record.*

The record on application for leave to appeal shall contain the petition, the State's attorney's answer or motion, any subsequent pleadings, the order and the memorandum of the court.
(Proposed.)

Cross reference. — See Rule 893 (Post Conviction Cases—Duty of Clerks).

Rule BK47. Leave Granted—Further Proceedings.

If leave to appeal shall be granted further proceedings shall be had pursuant to Chapter 800 (Appeals to the Court of Appeals) as if the order granting leave to appeal were the order of appeal filed pursuant to Rule 812 (Appeal—Time for Filing) except that if the record on application for leave to appeal shall constitute the entire record to be considered on the appeal then the time for the filing of the appellant's brief shall be within forty days after the date of the order granting leave to appeal.
(Proposed; art. 27, § 645-I.)

Cross references.—For payment of costs of review where Court of Appeals grants leave to appeal and applicant unable to pay costs of review, see article 27, § 645E. For finality of denial of application, see article 27, § 645-I.

For stay of order and admission to bail, where State appeals, see article 27, § 645-I. See also Rule 816 (b) (Stay of Execution by Filing Order for Appeal.)

For waiver of grounds not raised in original or amended petition, see article 27, §§ 645A and 645H.

Rule BK48. Subsequent Petition—Dismissal.

Unless the court finds in a subsequent petition under the Uniform Post Conviction Procedure Act grounds for relief which could not reasonably have been raised in a previous petition under said Act, the court, after response to the petition has been filed by the State, may forthwith dismiss the petition without a hearing or appointment of counsel.
(Cf. art. 27, § 645H.)

Cross reference.—For waiver of grounds not raised in original or amended petition, see article 27, § 645H.

SUBTITLE BL. QUO WARRANTO

Rule BL40. Writ Abolished.

The writ of quo warranto, and the information in the nature of quo warranto, are hereby abolished. Any relief heretofore available by these remedies shall be obtained by way of mandamus pursuant to Rule 1240 (BE40-BE46) (Mandamus).
(Proposed.)

Explanatory note.—In Soper v. Jones, 171 Md. 643, 646, 187 A. 833, the Court of Appeals stated that though the matter before it could have been resolved by the use of the Writ of Quo Warranto, the writ is not used in Maryland. See also 2 Alexander's British Statutes (9 Ann. Cap. 20, Mandamus) pg. 939, where it is said: "But in Maryland we have no proceeding by quo warranto (81 Md. 306) and mandamus is indifferently used for the one or the other". 6 Md. Law Rev. 186, 189 also offers an explanation for the absence of quo warranto in the Maryland practice.

The effect of this rule would be to supersede the special statutory writ of quo warranto provided for in Code, Article 69, section 3 (Officers—Inadvertent Issuance of Commission; when inquiry discovers person has not accounted for money). The only other special statutory authorization for the writ was that formerly used to forfeit charters of corporations in appropriate cases. However, with the revision of Article 23 in 1951, a new procedure was adopted. See Article 23, sections 80 and 84.

SUBTITLE BP. RECEIVERS AND ASSIGNEES OR TRUSTEES FOR CREDITORS

Topic III. Distribution

Rule BP1. Definitions and Scope.

a. *Definitions.*

As used in Rules BP1 to BP10, inclusive:

1. Assignee.

"Assignee" means a person to whom a debtor has made a general assignment of his property, in trust, for the benefit of his creditors.

Committee note. — The definition of a "general assignment" for the benefit of creditors is substantive and is beyond the scope of these Rules. Numerous decisions of the Court of Appeals have considered whether or not specific deeds constituted "general assignments" within the meaning of those provisions of the Code which required the trustee to file bond and which provided that no title passed to him until the bond was filed. (Code, Article 16, Sec. 175; superseded in part by Rule 1373 a 4 [V73] on Fiduciary Bonds). See United Railways & Electric Co. v. Rowe, 97 Md. 656, 658, 55 A. 703, which held that, where property was assigned for the benefit of one creditor only, the assignment was "not an assignment by a debtor for the payment of his debts generally within the meaning of the Code . . ." For cases distinguished between an assignment for the benefit of creditors and a deed of trust in the nature of a mortgage see Bank of Commerce v. Lanahan, 45 Md. 396 and Dudley v. Roberts, 144 Md. 155, 124 A. 883. Generally a general assignment for the benefit of creditors must convey all the debtor's property except such as may be exempt from process. Muhr v. Pinover, 67 Md. 480, 10 A. 289; Green v. Triebes, 3 Md. 11; Barnitz v. Rice, 14 Md. 24.

2. Court.

"Court" means a court of equity which has appointed a receiver, or has assumed jurisdiction over the estate of an assignee under Rule 1372 [V71] (Fiduciary Estate—Assumption of Jurisdiction).

3. Debtor.

"Debtor" means a person who has made a general assignment to an assignee, or for whom a receiver has been appointed.

Cross reference.—"Person" is defined in Rule 5 q (Definitions) as meaning "any natural person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever."

4. Receiver.

"Receiver" means a person appointed by a court of equity to liquidate the business or affairs of a debtor.

b. *Scope.*

1. Generally.

Rules BP1 to BP10, inclusive, are applicable to the estate of an assignee, and to the estate of a receiver appointed under the general authority of a court of equity, and under any of the following statutory proceedings to dissolve a corporation:

(a) Code, Article 23, Section 79 (Voluntary Dissolution).
(b) Code, Article 23, Section 80 (Involuntary Dissolution).
(c) Code, Article 23, Section 84 (Action to Forfeit a Corporate Charter).

2. Other Statutory Receivers.

(a) Rules Generally Inapplicable.

Except as provided in subsection 1 of section b of this Rule, Rules BP1 to BP10, inclusive, shall not apply to the estate of a statutory receiver, including a receiver or ancillary receiver appointed or qualifying as such under any of the following statutes:

(1) Code, Article 11, Sections 11 to 16, inclusive (Banking institution).
(2) Code, Article 11, Section 188 (Industrial Finance Company).
(3) Code, Article 16, Secs. 114-117 (To complete collections of a sheriff, deputy sheriff or tax collector).
(4) Code, Article 16, Section 202 (To take charge of the property of an absent person).

(5) Code, Article 39B, Section 10 (In an action brought under the Uniform Fraudulent Conveyance Act).
(6) Code, Article 48A, Sections 59, 60 or 74 to 81, inclusive (In an action brought by the Insurance Commissioner against an insurer).
(7) Code, Article 73A, Sections 22 and 28 (To collect assets of partner or limited partner upon passage of charging order).
(8) Code, Article 83, Section 48 (In action by creditor objecting to distribution of proceeds of Bulk Sale).

(b) Court—Order to Comply.

The court may, by order, require any statutory receiver, mentioned in paragraph (a) above, to comply with Rules BP1 to BP10, inclusive, or any portion thereof, insofar as such Rules are not inconsistent with the statutory provisions mentioned in paragraph (a) hereof.

Cross references.—The following rules pertaining to fiduciaries generally are applicable to assignees and receivers:

Rule 1372 [V71] (Fiduciary Estate—Assumption of Jurisdiction)—especially subsection b2 in re assignees.

Rule 1373 [V73] (Fiduciary Bond)—especially subsection a 4 in re bonds of assignees and receivers.

Rule 1376 [V76] (Registration of Securities).

Rule 1377 [V77] (Fiduciary and Personal Representative—Compromise — Litigation).

Rule 1380 [V80] (Transfer of Fiduciary Estate to Another Fiduciary).

Rule 1381 [V81-V82] (Resignation and Substitution).

Rule 1382 [V83] (Fiduciary in Military Service).

Rule 1383 [V84] (Removal for Cause). See also Rule 1301 [BR1 to BR6] (Judicial Sales) for procedural provisions pertaining to sales by assignees and receivers.

Topic I. Preliminary Duties

Rule BP2. Schedule of Debtor's Property and Debts.

a. *Preparation and Filing by Debtor.*

Within fifteen days after assumption of jurisdiction by the court over the estate of an assignee, or the appointment of a receiver, (unless the time be extended by the court for good cause shown) the debtor shall cause to be made and filed with the clerk, a schedule under oath, containing:

(1) His name, occupation, place of residence and name and address of his business;
(2) An itemized description of his property showing the nature and location thereof, any incumbrances thereon, and the value of the same, according to the best of his knowledge;
(3) A list of all his creditors, designating those whose claims are contingent, unliquidated, or disputed, and unpaid or accrued taxes, the residence or place of business of each creditor, the sum owing to, or claimed by, each creditor, with the actual consideration therefor, and a statement of any security for the payment of the same;
(4) A description of any property which he has transferred or disposed of, other than in the ordinary course of business, during the three years immediately preceding the making of such assignment or appointment of such receiver and as to each such transfer or disposition, the date thereof, the consideration therefor, and the disposition of such consideration, the person to whom the property was transferred or how it was disposed of, and, if the transferee is a relative, the relationship; and
(5) Any exemption claimed by the debtor.

b. *Failure to File—Filing by Assignee or Receiver.*

1. When Required.

If the debtor fails to file the schedule within the time provided for in section

a of this Rule, the assignee or receiver shall, within fifteen days after the expiration of such period, cause such schedule to be made and filed with the clerk, insofar as he is able to do so.

2. Debtor or Other Person May Be Compelled to Disclose Information.

The court may, at any time, order a debtor who is delinquent in filing such schedule, and any other person possessing information relative thereto, to appear before the court or an examiner, and disclose any knowledge or information such debtor or other person may possess which is necessary to the proper making of the schedule.

Cross reference.—See Rule BP5 (Deposition and Discovery—When Authorized.)

3. Failure to File Schedule or Disclose Information—Punishment by Contempt.

A debtor who wrongfully fails to file a schedule, pursuant to section a of Rule BP2, or a debtor or other person who wrongfully refuses to comply with an order to disclose information, pursuant to subsection 2 of this section b, may be punished for contempt.

Cross reference.—See Rule 636 (Enforcement of Process, Rules and Orders—By Contempt), Rules P1 to P5 (Contempt) proposed.

4. Failure of Assignee or Receiver to File Schedule.

(a) Removal of Assignee or Receiver.

(1) Order to Show Cause.

Where an assignee or receiver is required to file a schedule, pursuant to subsection 1 of this section b, and has failed to do so within the time provided in said subsection, the clerk shall forthwith make a written report of such delinquency to the court, which shall thereupon issue an order to the assignee or receiver to show cause within five days why he should not be removed. A copy of such order shall be sent to the surety on the bond of the assignee or receiver.

(2) Action of Court.

Unless such cause is shown and such schedule is filed, the court may remove the assignee or receiver, appoint a successor and order the removed assignee or receiver to turn over all appropriate papers, records and assets to such successor.

Cross reference.—See Rule 1383 [V84] (Fiduciary—Removal for Cause).

(b) Forfeiture of Commissions.

An assignee or receiver who has been in default with respect to the filing of a schedule, pursuant to subsection 1 of this section b, shall not, except by special order of court, be allowed or paid any commissions.

c. *Physical Examination of Assets Not Required.*

It shall not be necessary upon the filing of the schedule, pursuant to section a or b of this Rule, that the assets of the estate be exhibited to, or examined by, the clerk, the court or any officer thereof, unless otherwise ordered by the court.

d. *Clerk to Examine Schedule to Determine Sufficiency of Bond.*

The clerk shall examine the schedule to determine whether the amount of the assignee's or receiver's bond, and the sureties thereon, are sufficient to protect the estate. If, in his opinion, the amount of the bond, or the sureties thereon, are insufficient, he shall so notify the assignee or receiver. In the event such insufficiency has not been remedied within five days from the date of notice to the assignee or receiver, the clerk shall make a written report thereof to the court.

Cross reference.—See section a 4 of Fiduciary Rule 1373 [V73] (Fiduciary Bond) with reference to the filing of such bonds generally; see also section c 3(a) of the same Rule, which authorizes the court, for good cause shown, to order the penalty of any fiduciary bond to be increased or reduced.

e. *Schedule Filed by Corporation, Association or Partnership—Manner of Verification.*

Where the schedule is filed by a corporation, association or partnership, verification may be made by an officer of the corporation or association or by a member of the partnership.

(Proposed; Supreme Bench Rule 667 a (2).)

Rule BP3. Adverse Interest — Disclosure of — Assignee, Receiver, Counsel, Accountant or Appraiser.

a. *Court to Be Informed of Representation, Employment or Financial Interest.*

An assignee or receiver and each attorney, accountant or appraiser whom he desires to employ shall inform the court, under whose jurisdiction the debtor's estate is or will be administered, whether he has ever represented, or was ever employed by, the debtor or any then secured creditor of the debtor, and, in the case of a debtor or secured creditor which is a corporation, association or partnership, whether the assignee, receiver, attorney, accountant or appraiser, ever had any financial interest in such corporation, association or partnership.

b. *Manner of Disclosure.*

1. Generally.

Such information shall be disclosed to the court in the following manner:

(a) In the case of an assignee, in the petition filed requesting the court to assume jurisdiction over the debtor's estate.

(b) In the case of a receiver, by writing filed in the proceedings prior to his assuming his duties as receiver.

(c) In the case of an attorney, accountant or appraiser, by a certificate of the attorney, accountant or appraiser, which shall be attached to the petition in which the assignee or receiver requests authority to employ such person.

2. After Petition or Writing Filed.

If, after the filing of any petition or writing mentioned above, the assignee or receiver learns of any information required by section a of this Rule to be disclosed to the court, he shall immediately make disclosure thereof in writing, which shall be filed in the proceedings.

c. *Action after Disclosure.*

1. Conditions.

The court may permit a person to serve as assignee or receiver, or authorize a person's employment as attorney, accountant or appraiser, notwithstanding the fact that such person has represented, been employed by, or had a financial interest in, a debtor, or secured creditor, as set forth in section a of this Rule, if the court is satisfied that such person can nevertheless serve in good faith in a fiduciary capacity for all the unsecured creditors and stockholders, if any, of the debtor.

2. Disqualification of Assignee Not Bar to Assumption of Jurisdiction.

The court shall not refuse to assume jurisdiction over the estate of an assignee even though it finds that the assignee is disqualified from serving under this Rule, but the court may, in such case, after assuming jurisdiction, remove the assignee, appoint a successor and order the removed assignee to turn over all appropriate papers, records and assets to such successor.

d. *Failure to Disclose Required Information—Penalties.*

1. Removal.

A person who fails to inform the court of any information required to be disclosed by him pursuant to this Rule may be removed by the court.

2. Forfeiture of Compensation.

Such person shall not, except by special order of court, be allowed or paid any compensation.

Topic II. Administration

Rule BP4. Claims—Notice—Filing—Exceptions.

a. *Notice to Creditors.*

1. By Publication.

(a) Issuance of Order as of Course.

Upon the Court's assumption of jurisdiction over the estate of an assignee, or appointment of a receiver, the clerk, as of course, shall pass an order to publish a notice to creditors.

(b) Contents.

The notice shall set forth:

(1) The name in bold type, of the debtor and of the assignee or receiver;
(2) The name and address of counsel, if any;
(3) A general description of any business carried on by the debtor, and the location thereof;
(4) The court and docket number of the proceedings;
(5) The fact that a general assignment has been made by the debtor and that the court has assumed jurisdiction over his estate, or that a receiver has been appointed;
(6) That all persons having claims against the debtor should file them, properly authenticated, with the clerk of the court on or before a specified date, which shall be not less than sixty days from the date of the order provided for in subsection 1 of section a of this Rule.
(7) In the case of an assignee, whether or not the deed of assignment contains a provision requiring creditors to release their claims as a condition to their sharing in the distribution under the deed, or their gaining a preferred status over other creditors.

Committee note.—The circumstances under which such provisions are valid are beyond the scope of these Rules. For cases involving the validity of such provisions, see Sangston v. Gaither, 3 Md. 40; Maennel v. Murdock, 13 Md. 163; Loney v. Bayly, 45 Md. 447.

(c) Where Published—Frequency of Insertion.

A copy of such notice shall be published in one or more newspapers published in the county in which the court is located, if there be one so published, and if not, in a newspaper having a substantial circulation in said county; provided, however, that in the City of Baltimore the notice shall be published in one or more of the daily newspapers published in said city. Such notice shall be published at least once a week in each of three successive weeks, the last such publication to be not less than thirty days prior to the date specified in the notice as being the last day for the filing of claims.

(d) Certificate of Publication.

On or before the date specified in the notice as the last date for the filing of claims, the assignee or receiver shall cause to be filed with the clerk, a certificate that publication has been made pursuant to this Rule.

2. By Mail.

(a) Mailing by Assignee or Receiver.

Within five days after the passage of the order provided for in subsection 1 (a) of this section a, the assignee or receiver shall also send a copy of such notice by first class mail, postage prepaid, to all known creditors of the debtor.

(b) Proof of Mailing.

Within ten days after the passage of the order provided for in subsection 1 (a) of this section a, the assignee or receiver shall file in the proceedings proof of mailing of such notice to creditors.

Cross reference.—See 26 U. S. C. A., § 6036 with respect to the notice which is required to be given to the District Director of Internal Revenue of the fact that the assignee or receiver has qualified as such; and 26 U. S. C. A., § 6903 and 31 U. S. C. A., § 192, with respect to the rights and duties of an assignee or receiver concerning federal tax liabilities of the insolvent.

b. *Filing of Claims.*

1. Where Filed—Notice to Assignee, Receiver or Counsel Not Required.

A claim shall be filed with the clerk. It shall not be necessary to send a copy of the claim to the assignee or receiver, or to counsel for the assignee or receiver.

2. Manner of Filing—Proof.

(a) Generally.

A claim filed pursuant to this Rule shall consist of a statement, under oath, in writing and signed by a creditor, setting forth:

(1) the amount claimed;
(2) where there has been a payment on account, the amount of the original indebtedness and any payment made thereon;
(3) the consideration therefor;
(4) the security, if any, held therefor; and
(5) that the claim is justly owing by the debtor to the creditor.

(b) Claim Founded on Written Instrument.

(1) Instrument Required to Be Filed.

Whenever a claim is founded upon a written instrument, such instrument, or a true or photostatic copy thereof, shall be filed with the proof of claim unless the instrument and all copies thereof are lost or destroyed.

(2) Where Instrument Lost or Destroyed.

If such instrument and any photostatic or true copies thereof, are lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

(3) Withdrawal of Instrument.

When an original instrument is filed, such instrument may be withdrawn upon an order of court granting permission for such withdrawal, provided a copy of the same is substituted therefor.

(c) Open Account—When Required to Be Filed.

Where a claim filed pursuant to this Rule is based upon an open account, the assignee, receiver or any other creditor who has filed a claim in the proceedings, may, upon notice to the claimant, require him to file the open account in support of his claim.

(d) Verification.

(1) Personal Knowledge Required—Exception.

A claim shall be verified by a person having personal knowledge of the facts recited in the statement of claim, except that, where the claimant is engaged in business, the claim may be verified by a person who makes affidavit that the claimant keeps regular books of account, that the keeping of such books is in the charge, or under the supervision, of the affiant, that the entries in such books were made in the regular course of business and that the facts set forth in the statement of claim were disclosed by such entries.

(2) Joint Obligation.

Where a claim is based upon an obligation which is owed jointly to two or more persons, the claim may be verified by any one of the obligees.

(3) Corporation, Association or Partnership.

Where the claimant is a corporation, association or partnership, the claim may be verified by any officer or partner thereof, or any agent thereof authorized to make and file such claim.

c. *Claims Filed After Date Specified in Order.*

1. Late Filed Claims Allowable—Conditions.

A valid claim filed after the date specified in the court order passed pursuant to section a of this Rule, but prior to the date of reference to the auditor for the stating of an account, shall be entitled to distribution as though filed by the specified date.

Cross reference.—See Rule BP9 c (Reports—Auditor's Account).

2. Day of Finality for Filing—Cost of Restating Account.

Any allowed claim filed after any reference to the auditor shall not be entitled to participate in the immediately following distribution, except by order of court and for good cause shown. If necessary to restate the auditor's account in whole or in part to include such late filed claim, the cost of re-stating shall be imposed on such creditor, unless otherwise ordered by the court.

3. Right to Participate in Future Dividends.

A creditor who files an allowed claim too late to be included in one or more auditor's accounts shall be entitled in any subsequent account to receive a dividend on the same basis as those already received by other creditors in prior accounts, before such other creditors are allowed any further dividends, and thereafter to share with them in any future dividends.

d. *Exceptions to Claims.*

1. To Be Filed with Clerk.

An exception to a claim shall be filed with the clerk.

2. Form of Exception.

Such exception shall be in writing and shall specifically set forth the grounds for the exception.

3. When May Be Filed.

An exception to a claim may be filed at any time prior to the final ratification of the auditor's account in which such claim is allowed.

4. Service upon Claimant and Assignee or Receiver.

An exception to a claim shall be served upon the claimant and the assignee or receiver, pursuant to section c of Rule 306 (Service of Pleading or Notice).

5. Hearing—Court May Refer to Auditor or Examiner.

The court may refer an exception to a claim to an auditor or examiner for hearing.

(Proposed; art. 35, §§ 63, 64, 66.)

Cross reference.—Rule 580 (Examiner); Rule 595 (Auditor); Rule BP9 (Reports); Rule BP10 (Dividends).

Rule BP5. Deposition and Discovery—When Authorized.

An assignee or receiver without order of court, and any two or more creditors of a debtor upon order of court may—

(a) take the deposition upon oral examination or written questions of a debtor pursuant to the Rules relating to depositions in Chapter 400 of these Rules; and

(b) require the debtor to produce and permit the inspection and copying or photographing of documents and other books and papers pursuant to Rule 419 (Discovery of Documents and Property).

(Art. 16, § 47.)

Rule BP6. Employment of Attorney, Accountant, Auctioneer or Appraiser.

a. *Necessity for Court Order.*

An assignee or receiver shall not employ an attorney, accountant, auctioneer or appraiser unless he has first secured an order of court authorizing such employment.

b. *Petition—Contents.*

A petition requesting authority to employ an attorney, accountant, auctioneer or appraiser shall set forth (1) the necessity for such employment, (2) except as to an auctioneer, the information required by Rule BP3 (Adverse Interest—Disclosure of—Assignee, Receiver, Counsel, Accountant or Appraiser) and (3)

in the event the schedule required by Rule BP2 (Schedule of Debtor's Property and Debts) has not been filed, the character and approximate amount of the debtor's property and debts.
(Proposed.)

Rule BP7. Compensation and Fees.

a. *Sharing of Compensation Prohibited.*

1. Generally.

Except as provided in subsection 2 below, an assignee, receiver, or person performing services as counsel, appraiser, auctioneer or accountant for an assignee or receiver, shall not in any form or guise share, or agree to share, his compensation for such services with any person, without the express written approval of the court.

2. Exceptions.

This Rule shall not prohibit the sharing, or agreement for sharing, of compensation (a) by an assignee, receiver, counsel, appraiser, auctioneer or accountant with a partner or with some person regularly employed by him or with the firm by which he is employed; or (b) by counsel with a member of the bar, who is the assignee or receiver.

b. *Petition for Allowance of Compensation.*

1. Petitions for Commissions and Counsel Fee to Be Filed Together.

Unless the court otherwise permits, all petitions for allowance of commissions to an assignee or receiver, and of fees to them or their counsel for legal services, shall be filed at the same time.

Committee note.—In County Corp. v. Semmes, 169 Md. 501, 182 A. 273, the court observed that it is the usual and better practice to file petitions for such commissions and fees at or near the winding up of the proceeding because it is not until then that the court can view the administration of the estate as an entirety, and judge the value and extent of the services rendered.

2. Contents.

Each petition shall set forth:

(a) the gross amount of the estate;
(b) the total of the sums to be paid for liens, preferences and costs of administration;
(c) the approximate sum for distribution among secured and unsecured creditors;
(d) the amount and kind of services rendered;
(e) the amount of commissions and counsel fees, if any, previously allowed by the court;
(f) the fee or compensation, if any, received from, or agreed to be paid, by any source other than the estate in connection with the proceedings, and, if so, the particulars thereof; and
(g) whether an agreement or understanding exists between the petitioner and any other person (except as specified in subsection 2 of section a of this Rule) for a division of the compensation and, if so, the particulars thereof.

3. Petition for Counsel Fee—Certificate of Counsel Not Required—Court May Refer to Member of Bar.

A petition for the allowance of a counsel fee shall be filed by the attorney who has performed the legal services. Unless desired by the court, such petition shall not be required to contain a certificate of counsel as to the value of the services for which the fee is sought, but the court may, if it deems it advisable, request the advice of a member of the bar as to the value of such services.

c. *Allowance of Commissions and Fees.*

1. Commission Fixed in Deed of Assignment—Subject to Review.

The commission fixed in a deed of assignment by a debtor to an assignee shall be reviewed by the court as to the reasonableness thereof. The court may, for good cause shown, allow a fee to an assignee in lieu of commission.

2. Auctioneer Serving as Appraiser.

A person employed as an auctioneer, who also appraises the assets to be sold, shall not be allowed any compensation for making such appraisal other than the usual auctioneer's fee, unless ordered by the court upon petition filed setting forth such facts as show that such appraisal required the rendering of services other than those ordinarily performed by an auctioneer.

(Proposed; Supreme Bench Rule 665 A and C (in part).)

Rule BP8. Abandonment of Property and Records.

a. *Abandonment of Property.*

1. When Permitted.

The court may, upon petition of the assignee or receiver, order the abandonment of any property of the debtor if such property is worthless, overburdened, or otherwise of no benefit to the estate.

2. Notice.

It shall not be necessary to notify creditors of a petition for abandonment of property, unless otherwise ordered by the court.

Cross reference.—See section b 1 of Rule BP9 (Reports) which provides that a final account shall contain a statement that all property is accounted for, or abandoned pursuant to this Rule.

b. *Books and Records.*

1. Storage—When Permitted.

At any time after it has assumed jurisdiction over the estate of an assignee or appointed a receiver, the court may, for good cause shown, pass an order authorizing the storage of all or any part of the books and records of the estate and the payment of an appropriate amount for storage charges.

2. Destruction or Other Disposition.

(a) Order.

After the final ratification of an auditor's account which provides for the complete distribution of the estate, the court may, for good cause shown, pass an order authorizing the assignee or receiver to destroy, return to the debtor or otherwise dispose of the books and records of the debtor or of the estate at such time as shall be fixed in the order.

(b) Notice to Debtor and Tax Authorities.

The court shall not authorize the destruction, return or other disposition of books and records until notice of the petition requesting such authority has been given by first class mail to the Commissioner of Internal Revenue of the United States, the Comptroller of the Treasury of the State of Maryland, and to the debtor at his last known address.

(c) Copies.

The court may, in its order, provide that microfilm or other copies of designated documents be prepared and retained by the assignee, receiver or other designated person.

Topic III. Distribution

Rule BP9. Reports.

a. *Annual.*

1. Contents.

An assignee or receiver shall file with the clerk, at such times as are hereinafter provided, a report in which he shall—

(a) List, in summary form, the property held by him in his fiduciary capacity at the beginning of the reporting period;

(b) Report all collections and receipts during the reporting period;

(c) Report his expenditures, other credits and any distribution made during the reporting period;

(d) Report all changes (either by way of addition or diminution or change of form) in the property with which he is charged. In the case of a sale or other transaction specially authorized by court order, the report shall contain a reference to the date of the order and shall identify the other party to the transaction. Where such transaction is made on a stock exchange or "over the counter", it shall be sufficient to list the name of the exchange or the broker who effected the transaction; and

(e) List, in summary form, the property held by him in his fiduciary capacity on the last date of the reporting period covered by the report; in the case of monies, such description shall include the place of deposit, and the name under which the deposit was made.

Cross reference. — See *infra,* section b, for additional information required in the case of final reports; and see *infra* section e, which requires reports to be verified.

2. Completeness.

The data which must be included in a report submitted pursuant to subsection 1 of section a of this Rule, shall be included even though reported previously.

3. Period of Accounting—Filing.

(a) Generally.

The period covered by such report shall be (i) a fiscal year ending on the anniversary of the date on which the court assumed jurisdiction over the estate of the assignee or appointed the receiver, or (ii) upon notification to the clerk, any other fiscal year, provided the interval between the last report (or appointment or assumption of jurisdiction, if no report has yet been submitted) and the report submitted shall not exceed one year, or (iii) such other period, as may be ordered by the court for good cause shown. Such reports shall be filed not later than thirty days after the last day of the reporting period.

(b) Where Assignee or Receiver Conducts a Business.

(1) Report—Filing—Period Covered.

Where the assignee or receiver is conducting the business of the debtor, the assignee or receiver shall, in addition, file a report for each week the business is being conducted by him listing the receipts and disbursements of the business in such detail as the court may require. The report shall be filed not later than the third day after the end of each seven-day-period, unless the time for filing be extended by court order.

(2) Notice Where Business Conducted at a Loss.

In addition to the information required by subsection 1 of this section, such report shall contain a statement as to whether or not the business has been conducted at a loss during the seven-day period and during the aggregate period during which the receiver or assignee has conducted the business, and the amount of the loss, if any, for any such period.

b. *Final Reports.*

1. When Required—Contents.

Before making a final distribution of the estate, an assignee or receiver shall file a final report which shall contain:

(a) the same information required for the annual reports submitted pursuant to section a of this Rule for the period from the closing date of the last annual report until the proposed date on which the estate will be fully distributed; and

(b) a statement that all assets of the estate have been accounted for and that the assignee or receiver knows of no debts incurred during the administration of the estate other than those which have been paid or which are reflected in the report.

2. Final Ratification Required Prior to Distribution, Release of Bond, etc.

No final distribution shall be made to creditors, nor shall any estate be closed or any assignee's or receiver's bond be released until such final account has been audited pursuant to section c of this Rule and finally ratified by the court.

c. *Auditor's Account.*

1. Reference—Account.

All final reports and all other reports which are filed for the purpose of making a partial or total distribution of the estate shall be referred to an auditor. The auditor shall audit the report and state an account setting forth the distribution of the estate, but not, insofar as possible, restating the items contained in the report.

2. Notice to Creditors and Others by Auditor.

(a) To Whom Giving of Notice Required.

The auditor shall give written notice of the stating of an auditor's account, by first class mail, postage prepaid, to the debtor, the assignee or receiver, and to each creditor who has filed a claim in the proceedings.

(b) Contents.

Such notice by the auditor shall contain the following information:

(1) the total amount of assets reported in the account;
(2) the amount of approved liens and priorities;
(3) the costs of administration showing as separate items the court costs, commissions, and fees of counsel, auctioneer, accountant and appraiser;
(4) the amount available for distribution to general creditors;
(5) the percentage of distribution;
(6) whether such distribution is final or partial; and
(7) that the account will be finally ratified and confirmed at a designated time unless exceptions are filed prior thereto.

Cross reference.—See Rule BP10 (Dividends).

d. *Further Accountability.*

Nothing in this Rule shall be construed to abridge the power of the court to require an assignee or receiver to submit reports covering periods greater or lesser, or at times earlier or later, than those prescribed in this Rule, or to require the submission of more detailed information than that which is herein prescribed.

e. *Verification.*

A report submitted by an assignee or receiver pursuant to this Rule shall be verified by him. Verification by a corporate assignee or receiver may be made by any officer of the corporation. Verification on behalf of two or more assignees or receivers may be made by any one of them.

f. *Trust Clerk.*

1. Examination of Reports.

All reports submitted pursuant to this Rule, except those referred to an auditor for the purpose of stating an account pursuant to section c of this Rule, shall be examined by the trust clerk appointed under section b of Rule 1374 [V74] (Fiduciary Subject to Court Jurisdiction—Accounting). The trust clerk shall determine whether or not all the information required hereunder has been submitted and whether the amount of the bond of the assignee or receiver, and the sureties thereon, are sufficient to protect the estate.

2. Examination of Property Not Required.

It shall not be necessary that the property of the estate be exhibited to, or examined by, the trust clerk, unless otherwise ordered by the court.

3. Report and Recommendations.

After examining the report, the trust clerk shall report any irregularities in

the report to the court, and he shall also bring to the court's attention any other matter which he may deem appropriate together with his recommendation.

Committee note.—This Rule is not intended to repeal or supersede local rules of court dealing with trust clerks, except to the extent that this Rule may be inconsistent with such local rules.

g. *Failure to File Report—Penalties.*

1. Removal.

(a) Order to Show Cause.

Where an assignee or receiver has failed to file an annual report within the time provided in this Rule, or within an extension thereof by order of court, the trust clerk shall report in writing such delinquency to the court, which shall thereupon issue an order to the assignee or receiver to show cause within fifteen days why he should not be removed. A copy of such order shall be sent to the surety on the bond of the assignee or receiver.

(b) Appointment of Successor.

Unless a satisfactory answer is filed together with all overdue reports, the court may remove the assignee or receiver, appoint a successor and order the removed assignee or receiver to forthwith turn over all appropriate papers, records and assets to his successor.

2. Forfeiture of Commissions.

An assignee or receiver who has been in default with respect to the filing of an annual report required by section a of this Rule shall not, except by special order of court, be allowed or paid any commissions for the reporting period in question.

(Proposed; Supreme Bench Rule 667 A (2).)

Rule BP10. Dividends.

a. *Payment—Generally.*

After final ratification of an auditor's account in which a distribution to creditors has been stated, the assignee or receiver shall pay forthwith the dividend stated in the account.

Cross reference. — See section c of Rule BP9 (Reports) in re auditor's accounts.

b. *Partial Distribution.*

The court, in its discretion, upon application of the assignee, receiver or other person in interest, may direct such partial distribution as may be safely made from the money in the hands of the assignee or receiver to those creditors whose claims are not in dispute, reserving sufficient assets to secure, after final settlement of all claims, a proportionate distribution among all creditors whose claims are finally allowed.

c. *Disposition of Unclaimed Money or Dividends.*

1. Payment into Court.

Dividends or other moneys which remain unclaimed for ninety days after final ratification of the auditor's account distributing or providing for the payment thereof may be paid into court by the assignee or receiver.

2. Receipt of Clerk—Shall Constitute Release to Payor.

Upon receipt by the clerk of such unclaimed dividends or other moneys, he shall issue a receipt therefor to the assignee or receiver, which shall constitute a good and sufficient discharge and release to the assignee or receiver making such payment.

(Proposed.)

Cross reference.—See Code, article 17, § 44, which provides that after seven years, funds held by the clerk may, upon order of court, be paid to the State Treasurer.

SUBTITLE BQ. REPLEVIN

(1958 Md. Rule 1160)

(1958 MD. RULE 1160)

SUBTITLE BR. SALES—JUDICIAL

(1958 Md. Rule 1301)

(1958 MD. RULE 1301)

SUBTITLE BS. SALES—TAX

(1958 Md. Rule 1260)

(1958 MD. RULE 1260)

SUBTITLE BT. SCIRE FACIAS

Rule BT1. Venue.

Scire facias proceedings may be brought in any court where the judgment on which the *scire facias* will issue is recorded pursuant to Rule 619 (Recording of Judgment).

Cross references.—Rule 619 a provides for the recording of all judgments entered by the court, as well as transcripts or copies of judgments of the U. S. District Court, the Court of Appeals, another court of this State or any justice of the peace or trial magistrate. Code, article 75, § 75, provides generally that suit shall be brought in the county of the defendant's residence or place of business but is expressly made inapplicable to *scire facias.*

Committee note.—Under present practice the writ of *scire facias* is used for the following purposes:

1. To renew or revive a judgment — See Rule 624.
2. Under certain circumstances upon the death of a defendant—See Rule 622; Sykes, Maryland Probate Law and Practice, Vol. II, Sec. 1029; and McHugh v. Martin, 198 Md. 173, 81 A. (2d) 623.
3. Upon the death of a defendant after interlocutory, but before final, judgment. See, Poe, Practice, Vol. II, 5th Ed., Sec. 595.
4. Against a substituted personal representative after revocation of letters—See Rule 225 b.
5. Against a removed personal representative under certain circumstances where letters are revoked—See Rule 225 c.
6. Against a personal representative *quando acciderint* — See Code, Article 93, Sec. 116.

Scire facias was formerly used to recover future breaches of installments payable after judgment on a penalty bond and to ascertain whether there was cause for forfeiture of a corporate charter, but is no longer the appropriate procedure for either of these purposes. See with respect to the former, Committee Note following proposed Rule B 8 (Bond) and with respect to the latter, Poe, *op. cit. supra,* Vol. II, Sec. 613; Code, Article 23, Section 80; and Brune, Maryland Corporation Law and Practice, Section 405.

Explanatory note. — Parker v. Brattan, 120 Md. 428, 87 A. 756, holds that *sci. fa.* could issue out of the court where the judgment and docket entries were recorded. While there are no cases expressly applicable to recorded judgments of the Court of Appeals, U. S. District Courts, j. p., etc., the subcommittee feels that the same principle would be applicable and that there would be less expense and greater ease in practice than to require the plaintiff to return to the court where judgment was originally entered, obtain a new judgment there by *sci. fa.* and record the new judgment and docket entries elsewhere.

Rule BT2. Commencement of Action.

Scire facias proceedings shall be commenced by filing with the clerk the following:

a. *Order.*

An order to issue the writ, including the names and addresses of all persons upon whom the writ is to be served.

b. *Affidavit as to Residence.*

An affidavit by the plaintiff or by some person on the plaintiff's behalf certifying that, according to the best of his knowledge and belief, each person upon whom the writ is to be served actually resides or maintains a place of business at the address shown on the order or that such address is the last known address of such person.

c. *Real Property—Instructions to Sheriff.*

Where the object of the *scire facias* is to bind real property of a deceased judgment debtor or real property of a judgment debtor which has been alienated, instructions to the sheriff as to the description and location of such property.

Explanatory note.—*Sec. a*—see Poe, sec. 598. This is the present City practice.

Sec. b—this represents a change in present practice as no such affidavit is now required. One of the Baltimore City law clerks stated that in many instances the plaintiff will simply list the same address for the defendant as that which appeared

in the original action even though there has been a 12-year interval between the judgment and the *sci. fa.* and will make no bona fide attempt to ascertain the defendant's present whereabouts. It was suggested that this might be remedied by requiring registered mail notice to the defendant's last known address before a default judgment, but the subcommittee feels that the requirement of such notice might be unduly burdensome in many cases and might also raise jurisdictional problems.

Where a default judgment is rendered on a *sci. fa.* after two non ests and the defendant has no actual notice, the Court of Appeals has been fairly liberal in granting relief. See Starr v. Heckart, 32 Md. 267 (defendant allowed to enjoin execution on the *sci. fa.* judgment where he had been discharged under the insolvency laws prior to the *sci. fa.*) and Jones v. George, 80 Md. 294, 30 A. 635 (defendant allowed to strike the *sci. fa.* where it was issued 17 years after the original judgment).

Sec. c—sci. fa. against heirs and terre tenants is a proceeding in rem and there must be a specific description of the real estate against which the proceedings are brought. Lang v. Wilmer, 131 Md. 215, 226, 101 A. 706.

Rule BT3. Docket Entries.

The clerk shall docket the *scire facias* proceedings as a separate action and all process shall issue out of and all pleadings shall be filed in said action. All persons designated in the order to be served shall be named as defendants on the docket. The clerk shall also enter the issuance of the writ on the docket containing the entry of the judgment on which the *scire facias* is issued, but all other docket entries shall be made only on the separate docket of the *scire facias* proceedings.

Explanatory note.—This represents the existing Baltimore City practice.

Rule BT4. Process.

a. *Writ.*

Upon the filing of the documents required by Rule BT2 the clerk shall issue the writ of *scire facias* as of course.

Explanatory note.—The writ is in the nature of a declaration. It should contain on its face a statement of facts as will justify its issuance both as to form and parties, should show in what right and for what amount it is issued and should recite the judgment upon which it is issued. Poe, Vol. II, Section 598.

b. *Service.*

The writ shall be served pursuant to section a and subsection b (1) of Rule 104 (Service of Process) and section a of Rule 119 (Service of Process—Defendant Under Disability).

Cross references.—"Process" as used in Rules 104 and 119 includes a "writ". Rule 5 y. Rule 878 c (Execution—Scire Facias) provides that where *sci. fa.* is issued by the Court of Appeals against heirs or terre tenants, not all of whom reside in the same county, the *sci. fa.* shall be directed to the sheriff of each county where a defendant resides and be returnable to the county where the original *sci. fa.* was returnable.

Explanatory note.—The effect of sections a and b of this Rule is to supersede Article 75, Section 86 (which provides that it is not necessary for an officer serving a *sci. fa.* or attachment to make service in the presence of a witness) and Article 75, Section 87 (which provides that where *sci. fa.* is issued against heirs and terre tenants residing in a county other than that where the writ was obtained, a duplicate may be issued to the sheriff of the other county and served by him.) There is no requirement in Rule 104 b for the presence of a witness and Rule 104 a expressly authorizes service by the sheriff of any county within the state.

c. *Return—Where Real Property Involved.*

Where the object of the *scire facias* is to bind real property of a deceased judgment debtor or real property of a judgment debtor which has been alienated, the sheriff's return shall specifically name the heirs, devisees, alienees and terre

tenants upon whom the writ was served and shall also describe the real property proceeded against.

Explanatory note.—See note to section c of Rule BT2 and see Poe, Vol. II, Section 600.

Rule BT5. Assignee.

The assignee of a judgment may issue a *scire facias* in his own name. (Proposed; art. 8, § 2.)

Cross references.—See Rule 240 (Assignee) with respect to the rights of an assignee generally, and Poe, Pleading and Practice, Vol. II, Sec. 592.

See also Code, article 8, § 2, which provides that the writ may be issued in the assignee's name even though the assignor has died without administering upon the latter's estate.

Explanatory note.—Poe states that the assignee of a judgment can also sue out a *sci. fa.* in the name of his assignor, entering suit to his own use. There does not appear to be any reason to continue this practice since the assignee can obtain the writ in his own name. The proposed Rule thus conforms to Rule 240 a which provides that the assignee of a judgment may maintain an action or issue execution in his own name.

Rule BT6. Pleading.

The defendant may file any plea to the *scire facias* except that no matter shall be pleaded which could have been pleaded as a defense in the action in which the original judgment was obtained.

Cross reference.—See Rule 307 (Time for Defendant's Initial Pleading) which is expressly made applicable to *scire facias* proceedings, and Rules 341 (Plea—Dilatory) and 342 (Plea—In Bar).

Explanatory note.—The above Rule is a codification of existing case law, Kemp v. Cook, 6 Md. 305; Moore v. Garrettson, 6 Md. 444; Ruth v. Durendo, 166 Md. 83, 170 A. 582. Some pleas which have been relied upon, other than limitations, are accord and satisfaction, bankruptcy and insolvency. See cases cited in Poe, Vol. II, Secs. 602-605.

Rule BT7. Judgment.

If the writ is personally served on the defendant and he fails to plead within the time provided in Rule 307 (Time for Defendant's Initial Pleading) or if the writ is twice returned *nihil,* the court shall, upon motion of the plaintiff, enter judgment of *fiat* absolute for the amount then found to be due. However, where there has been no personal service on a defendant, judgment of *fiat* absolute shall be entered against such defendant only upon proof of the exact amount claimed to be due. For purposes of such proof, the affidavit of the plaintiff shall be evidence.

Explanatory note.—By Supreme Bench Order (Daily Record, July 18, 1949) judgment may be entered only upon motion and order of court.

There is virtually no statutory law on *scire facias* procedure. Consequently, almost all of the provisions of the Rules proposed are codifications of case law and existing practice in the Baltimore City law courts.

Scire facias, although in form a judicial writ, is in many procedural respects similar to an original cause of action and fits within the general framework of the Rules in Chapters 100 and 300. However, there are certain special aspects of *scire facias* procedure. Because of these procedural differences a rule on *scire facias* will serve a useful purpose as a guide to the practitioner notwithstanding the present lack of statutory procedural law in this field.

Nature of Writ.

Poe, Volume II, Section 585, states that "*scire facias* is a writ grounded on some record remaining in the court from which it is issued, by which the sheriff is required to make known to the party who is charged, or who is sought to be charged, to appear on a day specified and show cause why an execution should not be issued". Although it is a writ of execution, it has most of the attributes of an original cause of action. The defendant is entitled to plead to it, the writ itself is a declaration, and the judgment thereon is a new judgment. Poe, *ibid.*

Grounds for Issuance.

1. *To Renew a Judgment*—Rule 622 a pro-

vides that there may be execution on a judgment any time within twelve years from the date it is entered or recorded. Rule 624 provides that a writ of *scire facias* may be issued to renew or revive a judgment, but such judgment shall not be renewed or revived if the judgment debtor pleads the bar of limitations. It has been held that a judgment may be renewed even after lapse of the twelve year period unless the plea of limitations is interposed. O'Neill & Co. v. Schulze, 177 Md. 64, 7 A. (2d) 263. But, if the *scire facias* is issued after the expiration of the twelve year period, the lien of the new judgment will exist only from the date of the issuance of the writ and accordingly, any intervening lien will have priority. Rule 624; Post v. Mackall, 3 Bland 486; Hodges v. Sevier, 4 Md. Ch. 382.

2. *Upon the Death of a Defendant*—If a judgment is entered against more than one defendant, it is now possible under Rule 622 d to issue execution against the surviving defendant without issuing a *scire facias*. All that is required is that the plaintiff file a suggestion of death supported by affidavit. The same procedure is followed upon the marriage of a *femme sole* judgment debtor.

However, where a sole judgment debtor dies or where it is desired to proceed against the heirs or personal representatives of a deceased joint judgment debtor, the plaintiff, in order to charge the personal representatives or heirs, must sue out a *scire facias*. The *scire facias* may be issued against the personal representative only if all that is desired is to bind the assets in his hands. If, on the other hand, it is desired to renew the judgment against the lands of the deceased judgment debtor, the *scire facias* should be sued out against the heirs or devisees and terre tenants. Sykes, Maryland Probate Law and Practice, Volume II, Section 1029. *Scire facias* against the heirs and terre tenants of a judgment debtor is a proceeding in rem, and the judgment does not bind them personally, but is a lien only against the property in their possession. Even though the plaintiff fails to file the judgment as a claim against the deceased debtor's estate within the period specified by the notice to creditors, he may nevertheless file a *scire facias* to bind real property of the decedent as against his heirs or devisees and terre tenants. McHugh v. Martin, 198 Md. 173, 81 A. (2d) 623.

3. *Against Personal Representative*—(a) Rule 225 b provides that where the letters of a personal representative are revoked after judgment has been entered against him, *scire facias* may issue against the substituted personal representative.

(b) Rule 225 c provides that where judgment has been entered against a substituted personal representative who does not have sufficient assets to satisfy the judgment, *scire facias* may issue against the original personal representative whose letters were revoked if it is alleged that the original personal representative had assets over and above those delivered to the substituted personal representative.

(c) Article 93, Section 116 provides that where judgment is entered against a personal representative *quando acciderint, scire facias* must issue before execution. The writ suggests that since recovery of the judgment the defendant has come into possession of assets and warns him to appear and show cause why execution should not issue. Sykes, Volume II, Section 1029.

4. *To Recover Future Installments on a Penalty Bond*—Article 75, Section 40 provides that judgment upon a penalty bond shall be for the full amount of the penalty to be released upon payment of the amount actually found to be due. Where all the installments are not due when the judgment is obtained and there is a subsequent breach following the judgment, the plaintiff, under the statute of 8 and 9 William 3, Chapter 3, could sue out a *scire facias* on the judgment to recover future installments. Poe, Section 596. (When the Rules Committee considered the general bond rule, (H1 to H8) it decided to abolish the old practice of entering judgment on a penalty bond for the full amount of the penalty regardless of the amount actually due. Consequently, under the proposed bond rule (H1 to H8) the judgment will be rendered for only the amount due at the time suit is brought and the present practice of recovering future installments by *scire facias* will no longer be available.)

5. *To Complete an Interlocutory Judgment* — Where the defendant dies after an interlocutory judgment is entered, but before the assessment of damages, his successors in interest can be brought in by *scire facias*. Poe, Section 595.

6. *To Ascertain Whether Cause for Forfeiture of a Corporate Charter Exists—Scire facias* has been used for this purpose as a common law remedy in a proceeding instituted by a government official. Poe, Section 613. It is no longer so used under modern practice since there is now a similar proceeding by bill in equity under Article 23, Section 80. Brune, Maryland Corporation Law and Practice, Section 405.