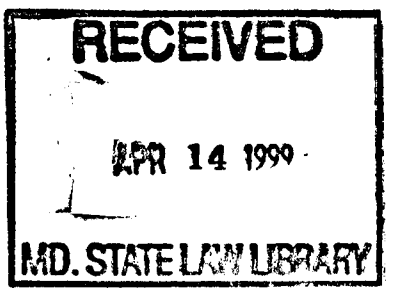

TENTATIVE DRAFT

MARYLAND RULES OF PROCEDURE

CHAPTER 1
GENERAL PROVISIONS

CHAPTER 100
COMMENCEMENT OF ACTION AND PROCESS

CHAPTER 200
PARTIES

CHAPTER 300
PLEADING

CHAPTER 400
DEPOSITIONS AND DISCOVERY

CHAPTER 500
TRIALS

CHAPTER 700
JUDGMENT

Published by
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CHARLOTTESVILLE, VIRGINIA
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Preface

This volume contains those proposed Rules dealing with regular law and equity actions which have received tentative approval by the Standing Committee on Rules. They are being thus submitted to the members of the Bench and Bar of Maryland for criticism and suggestions before final consideration by the Committee and submission to the Court of Appeals for its consideration. A chapter containing the Rules with respect to appeals will be separately printed at a later date and distributed to the members of the Bench and Bar. Thereafter, the chapters containing the Rules with respect to special proceedings (Chapter 600) dealing with such matters as attachments, ejectment, divorce, injunctions and many other special topics; criminal procedure (Chapter 900); miscellaneous provisions (Chapter 1000); and juvenile causes (Chapter 1100) will be distributed.

The printing and gratis distribution of this and succeeding tentative drafts of the Rules is made possible by the generous co-operation of The Michie Company of Charlottesville, Virginia. This company holds the Flack copyright and will hereafter publish the Maryland Code. Michie proposes to publish the next edition of the Code in the form of multiple volumes and to keep the same current with annual pocket part supplements. The Rules when adopted by the Court of Appeals will be included in a separate volume of the Code, will be annotated by Michie and kept current with annual pocket part supplements. Thus, once the present codification project is completed and printed, the Rules of Maryland Procedure in current form will always be available to the Bar.

The committee concluded to entrust to The Michie Company the indexing of the Rules when adopted by the Court. This is a very critical phase of the committee's work, for the usefulness of the codification will depend largely upon the adequacy of the Index. A study of Michie's prior work in this field persuades the committee that its work may be expected to be satisfactory and far better than the committee or its staff could accomplish. See the Virginia Code as a good example of indexing by The Michie Company. Each chapter of the Rules will be preceded by a comprehensive table of contents.

Pending the publishing of an Annotated Edition of the Rules as a part of the Code, The Michie Company will print and publish the codification of the Rules as they are adopted by the Court of Appeals. The company has agreed to publish the main part of the Rules dealing with usual law and equity actions and appeals at a cost to members of the Bar not to exceed $2.00 per copy.

The committee regards it as desirable to avoid, so far as is humanly possible, the repeal by implication of existing Rules or statutes. To this end, the final Rules will contain a series of sections which will specifically enumerate those Rules and sections which are repealed, superseded or otherwise modified by the codification. The task of accurately drafting these so-called supersedeas sections is a formidable one and is receiving the intensive consideration of the committee and its staff. It is important, too, that the various sections and the provisions of the substantive law to which they relate be thoroughly cross-referenced. This work is also going forward. The committee proposes that it will, in co-operation with the Department of Legislative Reference, draft a bill or a series of bills for the purpose of re-enacting the substantive provisions of the statutes which contain both substantive and procedural law. The latter will, of course, be included in the codification and should no longer appear in the regular articles of the Code.

The work herewith submitted is primarily a codification of existing Rules, procedural statutes and adjective law determined by the Court of Appeals. While many of the Rules and statutes have been rearranged, broken into shorter paragraphs and clarified, there are relatively few changes in substance. Where gaps in our present procedural law were found or where a substantial change was

thought desirable, all such new matter or material alterations are italicized so that the reader may note at a glance any substantial departure from existing procedural law. The codification herewith submitted does not include such procedural statutes as were enacted by the 1955 Session of the General Assembly. They will, of course, be included before the final draft is completed and submitted to the Court of Appeals for its consideration.

Following each Rule or section will appear in abbreviated form a reference to the source whence the section comes. Thus: Art. 16 § 176 refers to the 1951 Edition of the Code; G. E. 11(2) refers to the second paragraph of General Equity Rules ♯ 11; G.R.P.P. Pt. Three IV Rule 3 refers to Rule 3 of Title IV of Part Three of the General Rules of Practice and Procedure of the Court of Appeals now in force; W.B. 102a. refers to section 102a of the "Work Book", printed by the committee January 23, 1947, as a starting point in its studies; M.D. 103c refers to section 103c of the sub-committee's mimeographed draft of the Rule concerned; (2054) represents a cross-reference to the supersedeas section which will be incorporated in the final draft of the Rules and which will indicate the extent to which the Rule will repeal or supersede or otherwise modify the prior statute or Rule. Occasionally, the word "Proposed" will be found and this indicates that the section so designated is new and represents a change in the existing law. In most cases such a section in this publication will be italicized.

The committee had expected to print Chapter 800, dealing with Appeals, as a part of this publication. However, that Chapter has been found to be a very difficult job and is not yet ready. A decision was reached not to delay this volume until the Chapter on Appeals is ready because (1) the committee is anxious that members of the Bench and Bar be afforded an early opportunity to review the committee's work, and (2) that Chapter will represent quite a substantial revision in the appellate Rules and statutes. These have not been in harmony for many years, contain many contradictions and ambiguities, and the Court of Appeals expressed a desire to have the committee give consideration to an adequate rewrite of the procedural statutes and Rules respecting appeals to that Court. For instance, there are over eighty statutes and some ten Rules fixing the time for appeal. This problem will be solved by providing a uniform period of thirty days for appeal with few, if any, exceptions.

The committee will mail to members of the State and City Bar Associations a copy of Chapter 800, and criticisms and suggestions are invited to that draft. It is expected that a suggested draft of Article Five of the Code, containing the substantive statutory provisions respecting appeals, will be submitted at the same time, probably in September of this year.

While the committee has sought to use the utmost care in drafting these tentative Rules, the members have no illusions about the probability of errors, inconsistency, and lack of clarity. It is urged that all members of the Bar review these Rules with care and communicate their suggestions to the committee by September 15th of this year. On the following page will be found a list of the committee members and staff and any of these gentlemen will be glad to discuss any problems presented by the Rules. If requested, the committee will arrange to have a representative discuss the proposed Rules at any meeting of local Bar Associations. At the end of this volume will be found several perforated pages and it is suggested that when members of the Bar have crystallized their thinking concerning suggested changes that they be outlined on these perforated pages or on sheets to be attached thereto and forwarded to Mr. Frederick W. Invernizzi, the committee's reporter, 6th Floor, Courthouse, Baltimore 2. This tentative draft of the Rules will be reconsidered by the committee in the light of these criticisms and suggestions.

Court of Appeals Standing Committee on Rules of Practice and Procedure

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Chapter 1.
General Provisions.

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GENERAL

Rule 1. Scope of Rules ..... Gen'l.

a. *Law, Equity, Criminal and Juvenile.*

The following Rules of Procedure apply to procedure in all criminal and civil cases at law and in equity in courts of Maryland, appeals to the Court of Appeals, and proceedings in juvenile causes. They may be cited as the "Maryland Rules." (Proposed.)

b. *Procedure.*

"Procedure" includes all matters and subjects on which the Court of Appeals

is authorized to prescribe general rules by Article IV, sections 18 and 18A of the Constitution or by Code, Article 26, section 35, or otherwise.
(Proposed; see G.R.P.P. 1.)

c. *Application to Maryland.*

All provisions and references, except insofar as expressly provided, or as may result from necessary implication, refer to the Constitution, laws and officers and institutions of the State of Maryland.

d. *Law and Equity Distinct.*

These Rules shall not be interpreted to affect the existing distinction between law and equity.

e. *Statutes Adopted as Rules.*

Except as modified or superseded by these Rules, all existing general and local statutes and rules of the Court of Appeals regulating practice and procedure in civil cases at law and in equity in courts of this State are hereby adopted as general rules of the Court of Appeals, pursuant to its powers under Article IV, sections 18 and 18A of the Constitution and of Code, Article 26, section 35.

f. *Court May Make Local Rules.*

The judges of the several courts shall have power to establish rules governing the practice and procedure in their respective courts and for the good government and regulation, and the proceedings thereof, and the officers and suitors therein, provided that such rules shall not be inconsistent with any general rules adopted by the Court of Appeals, or with any statute then or thereafter in force. (Art. 26, § 37, G.E. 55, R. 65c.)

g. *Terms of Court.*

Terms of the courts for purposes other than the return of process shall be regulated by rules or orders of the respective courts.

h. *Modification of Statutory Provisions.*

Where in these Rules there is incorporated a part but not all of a pre-existing statute, the part of such pre-existing statute omitted from these Rules shall not be abrogated or affected, unless so expressly provided, or such part be inconsistent with these Rules, or such abrogation or modification may result from necessary implication.

Committee note. — In many cases statutes have been passed by the General Assembly which include in the same section provisions as to jurisdiction, substantive rights, administrative duties and penalties, as well as procedure. These Rules apply only to procedure.

It is not practicable prior to the adoption of the Rules to make express amendments eliminating procedural matters in the case of all the statutes involved, or to repeal and re-enact such statutes eliminating procedural provisions. The purpose of the foregoing section h is thus to make clear that provisions of statutes with respect to matters other than procedure are not affected.

i. *Jurisdiction Not Affected.*

These Rules shall not be construed to extend, limit or affect the jurisdiction of any court.
(Cf. Federal Rule C.P. 82.)

j. *Venue Not Affected.*

These Rules shall not apply to venue of actions at law and in equity except insofar as expressly provided herein.
(Proposed.)

Rule 2. Interpretation .....Gen'l.

a. *Declaratory.*

These Rules shall be interpreted as declaratory of the practice and procedure as it existed prior to their adoption, except insofar as is otherwise expressly provided or they are inconsistent therewith, or as may result from necessary implication.

b. *Numbering — Designation of Scope by.*

1. *Chapters 100-800.*

Rules in Chapters 100-800 bearing numbers of which the last two digits constitute numbers between 1 and 39, inclusive, apply to procedure generally, both at law and in equity.

Rules in Chapters 100-800 bearing numbers of which the last two digits constitute numbers between 40 and 69, inclusive, apply to procedure at law only.

Rules in Chapters 100-800 bearing numbers of which the last two digits constitute numbers between 70 and 99, inclusive, apply to procedure in equity only. (Proposed.)

2. *Criminal Causes — Chapter 900.*

Rules in Chapter 900 apply to criminal causes.

3. *Juvenile Causes — Chapter 1100.*

Rules in Chapter 1100 apply to juvenile causes.

4. *Repealers — Chapter 2400.*

Chapter 2400 contains statutes superseded by these Rules.

c. *Headings Not Rules.*

The headings, subheadings, references and annotations contained in these Rules constitute no part of the Rules, but are for convenience only. (Proposed.)

d. *Singular and Plural — Masculine and Feminine.*

Words in the singular shall include the plural number and words in the masculine shall include the feminine and neuter genders except as may result from necessary implication.

Rule 3. General Provisions .....Gen'l.

a. *Attorney May Act for Party.*

Where in these Rules it is provided that a party may act, such act may be performed by his attorney except as otherwise provided. Where any notice is to be given, by or to a party, such notice may be given by or to the attorney of such party.

b. *Prompt Hearing.*

The court shall hear and determine a demurrer, dilatory plea, motion and preliminary proceedings as promptly as possible with or without oral testimony as justice may require.

Rule 4. Governmental Officers and Bodies .....Gen'l.

As used in these Rules, the following terms have the following meanings, except as expressly otherwise provided or as may result from necessary implication:

a. *Court.*

"Court" means the Circuit Court for any county, the Superior Court of Baltimore City, the Court of Common Pleas of Baltimore City, the Baltimore City Court, the Circuit Court of Baltimore City, and the Circuit Court No. 2 of Baltimore City, Criminal Court of Baltimore, but not the Supreme Bench of Baltimore

City, or any People's Court, except as expressly otherwise provided, or may result from necessary implication. The word "court" shall include a court of law or a court of equity.
(Proposed.)

b. *Judge.*
"Judge" means the judge of a court. The powers of a court as set forth in these Rules may be exercised by a judge.
(Proposed.)

c. *Clerk.*
"Clerk" means the clerk of a court.

d. *County.*
"County" means a county of this State including the City of Baltimore.

Rule 5. Definitions .....Gen'l.

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

a. *Action — Appeal from Inferior Court or Administrative Body.*
"Action" shall include all the steps by which a party seeks to enforce any right in a court of law or equity. Unless otherwise indicated, the word "action" shall include an appeal taken to a court of record from the final decision of an inferior court or administrative body, where such appeal is authorized by statute. "Action" shall not include a criminal proceeding.

b. *Affidavit — Oath — Affirmation.*
"Affidavit" means an oath or affirmation sworn or made before an officer or other person authorized to administer an oath or take an affirmation that the matters and facts set forth in the paper writing or pleading to which it pertains are true to the best of the affiant's knowledge, information and belief. An "oath" means a solemn promise and declaration, sworn to under the penalties of perjury, that a certain statement of fact is true. An "affirmation" means a solemn promise and declaration, made under the penalties of perjury, by a person who conscientiously declines to take an oath, that a certain statement of fact is true. Whenever, under these Rules, a pleading or other paper is required to be "verified", this means that an affidavit must be made thereto.

c. *Attorney.*
"Attorney" means attorney at law of record, solicitor in equity of record or other counsel of record in an action. "Counsel" means attorney.

d. *Circuit.*
"Circuit" means a judicial circuit as provided in Article IV, sections 19-39, inclusive of the Constitution of Maryland, and shall include the Supreme Bench of Baltimore City as there defined.

e. *Defendant.*
"Defendant" means a defendant in an action at law, a respondent in an action in equity, and the person against whom some remedy or relief is claimed by a petitioner or other person filing an original pleading at law or in equity.

f. *Executor and Administrator.*
"Executor or administrator" means an executor or administrator appointed by any Orphans' Court or Register of Wills of this State. "Foreign executor or administrator" means an executor or administrator appointed by a court of probate or other proper authority in some other state, territory or foreign country.

g. *Foreign Letters Testamentary or of Administration.*
"Foreign letters testamentary or of administration" means letters testamentary or of administration or other documents or certification for the appointment of an executor or administrator, issued by a court of probate or other proper authority in some other state, territory or foreign country.

h. *Guardian.*
"Guardian" means a natural guardian or a guardian appointed by a court including a guardian ad litem.

i. *Judgment.*
"Judgment" means judgment at law, decree in equity or other act or order of court final in its nature, including but not limited to: declaratory judgment, award in condemnation, judgment of a justice of the peace or trial magistrate duly recorded by a court, decretal order, judgment by default, decree pro confesso.

j. *Nonresident.*
"Nonresident" means a person who is not a resident of this State.

k. *Person.*
"Person" means any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.
(Art. 31A, § 13.)

l. *Person under Disability.*
"Person under disability" means an infant under the age of twenty-one years, or a person incompetent by reason of mental incapacity.

m. *Plaintiff.*
"Plaintiff" means a plaintiff in an action at law, a complainant in an action in equity, and a petitioner filing an original pleading at law or in equity whereby he claims some remedy or relief, or other person filing an original pleading.

n. *Plea, Dilatory.*
"Dilatory plea" means a plea founded on some matter of fact not connected with the merits of the case, without impeaching the right of action itself, including a plea to the jurisdiction, a plea in suspension by reason of temporary incapacity to proceed, and a plea in abatement by showing some matter for abatement or quashing the declaration.

o. *Plea in Bar.*
"Plea in bar" means a plea or reply to an original pleading or other preceding pleading intended to bar the plaintiff or claimant from recovering in whole or in part on an action or claim, such as general issue plea in contract or in tort, or any special plea in bar.

p. *Pleading and Pleadings.*
"Pleading" means any paper filed in any proceeding, setting forth a cause of action or ground of defense, or matter in abatement, or filed with the object of bringing an action to issue or trial or obtaining any decision or act by the court including, but not limited to a declaration, bill of complaint, petition, motion, demurrer, plea, answer, demand for particulars, bill of particulars, exception, replication, and an order of court requiring a reply. "The pleadings" means one or all of such papers. "Original pleading" means the first pleading filed in an action.

q. *Proceedings.*
"The proceedings" means all or any part of an action.

r. *Process.*
"Process" means any written order issued by a court to secure compliance with its commands, or to require action by any person, including, but not limited to a summons at law or in equity, an order of publication, a commission, a writ and an order of any kind.

s. *Reference to Code.*
Reference to Article and section of the Code shall mean the Article and section of "The Annotated Code of The Public General Laws of Maryland" edited by Horace E. Flack and published in 1951, and the 1954 Supplement thereto.

t. *Return Day.*
"Return day" means a day to which any summons or other process requiring action by a defendant shall be made returnable.

u. *Sheriff.*
"Sheriff" means sheriff of the county in which the proceedings are taken and any elisor appointed to perform the duties of the sheriff.

v. *Successor in Interest.*
"Successor in interest" shall include the heir, devisee, executor, administrator, other personal representative or other proper party who succeeds to the interest of a deceased party to an action.

w. *Summons.*
"Summons" means a writ or order, directed to a person, and requiring his attendance at a particular time and place, in connection with proceedings, to take such action as may be specified therein. "Summons" shall include "subpoena".

x. *Writ.*
"Writ" means a written precept or order, issuing from a court, addressed to a sheriff or other officer of law, or directly to the person whose action the court desires to command, either at the commencement of an action, or as incidental to its progress, requiring performance of a specified act, or giving authority and commission to have such act done.

Rule 8. Time—Computation—Sunday and Holiday .....Gen'l.

In computing any period of time prescribed or allowed by the rules of any court, or by order of court, or by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday or a holiday; or, (2) the act to be done is the filing of some paper in court, and the office of the clerk of said court on said last day of the period is not open, or is closed for a part of a day, in which event, the period runs until the end of the next day which is neither a Sunday, Saturday, a legal holiday, or a day on which the said office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven days, intermediate Sundays and holidays shall be considered as other days; but if the period of time allowed is seven days or less, intermediate Sundays and holidays shall not be counted in computing the period of time.
(G.E. 27, art. 94, § 2.)

Rule 18. Judge .....Gen'l.

a. *Disqualification by Consanguinity or Affinity.*
A judge, including a judge of the Court of Appeals, who shall be connected by consanguinity or affinity with any party to an action within the third degree,

counting down from a common ancestor to the more remote, shall be disqualified from sitting in such action.
(Art. 26, § 30.)

b. *Decision in 2 Months.*
A judge shall render his decision in all cases argued before him, or submitted for his judgment, within two months after the same shall have been so argued or submitted.
(Const., art. IV, § 23.)

Rule 20. Clerk .....Gen'l.

a. *Adjournment of Court in Absence of Judge.*
In case of the absence of the judge, the clerk may adjourn the court from day to day; or he may, by written order from the judge, adjourn the court to the next term thereof, or to such other day before the next term as by said order he may be directed.
(Art. 26, § 5.)

b. *Auditor's Accounts — Power of Clerk to Ratify Nisi.*
A clerk shall have concurrent power with the judge of his court to pass all orders *nisi* for the ratification of auditor's reports and accounts, but not final orders.
(Art. 17, § 46.)

EQUITY

Rule 71. Procedure in Equity—Generally .....Equity

a. *Judge to Have Power of Court of Chancery.*
A judge shall, in his circuit, have and exercise all the power, and authority and jurisdiction which the court of chancery formerly held and exercised, except in so far as the same may be modified by law or these Rules.
(Art. 16, § 102.)

b. *Jurisdiction.*
A judge may grant an injunction, or pass an order or decree in equity, at any place in his circuit, to take effect in any part of his circuit, and may require in writing the original papers in any case, or abstracts and transcripts to be produced before him, wherever he may be in his circuit.
(Art. 16, § 103.)

Rule 79. No Jurisdiction under $20 .....Equity

A court of equity shall not hear, try, determine or give relief in any action wherein the original debt or damages does not amount to twenty dollars.
(Art. 16, § 123.)

Rule 80. Court of Equity Always Open .....Equity

A court of equity shall be deemed and taken to be always open for the transaction of business therein.
(G.E. 1, art. 16, § 172.)

Rule 85. Opinion in Equity .....Equity

a. *Opinion to Be Filed.*
In an action in equity, it shall be the duty of the court to file an opinion in re-

spect of any final decree or decretal order, whenever such decree or order shall have passed upon argument, oral or in writing, on the part of any party.
(Art. 16, § 209.)

b. *Exception for Baltimore City and Prince George's County.*
Section a of this Rule shall not apply to Baltimore City or Prince George's County.
(Art. 16, § 209.)

Chapter 100.

Commencement of Action and Process.

RULES 101-199

General

Law

Equity

GENERAL

Rule 102. Return Day .....Gen'l.

a. *Designation of.*
The return day for all summonses and other process requiring action by a defendant, or by the sheriff or an officer of the court, shall be the first Monday in each month, except as otherwise stated in such process.
(G.R.P.P. Pt. Three, IV, Rule 2(2054), G.E. 11(1) (2010), art. 16, § 176, W.B. 101.)

Rule 103. Process—Issuance—Form and Return .....Gen'l.

a. *Power of Court to Issue.*
A court may issue process of any sort to any part of the State.
(Art. 16, § 230, W.B. 160, M.D. 103b.)

b. *Summons.*
When an action is commenced, the clerk shall forthwith issue as of course a summons thereon against each defendant residing in the State without the necessity of any prayer therefor, and deliver it to the sheriff for service.
(Art. 16, § 176, G.E. 11(2) (2010), G.R.P.P. Pt. Three, IV, Rule 3 (2054), W.B. 102a, M.D. 103c.)

c. *When Returnable.*
The summons shall be made returnable at the first return day after its issuance, or if the plaintiff so directs, at the second return day after its issuance.
(G.R.P.P. Pt. Three, IV, Rule 3(2054), G.E. 11(2) (2010), art. 16, § 176, W.B. 102b, M.D. 103d.)

d. *Separate for Several Defendants.*
Upon request of the plaintiff, a separate summons shall issue against any of several defendants, and an additional summons shall issue against any defendant.
(G.R.P.P. Pt. Three, IV, Rule 3(2054), G.E. 11(2) (2010), art. 16, § 176, W.B. 102c, M.D. 103e.)

e. *Form and Contents.*
The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names and addresses of the parties, shall state the name and address of the plaintiff's attorney, if any, and the time within which the defendant must make his defense, and shall notify the defendant that in case of his failure to do so judgment by default or decree pro confesso may be rendered against him for the relief demanded by the plaintiff.
For form of summons, see Appendix.
(G.R.P.P. Pt. Three, IV, Rule 4(2054), G.E. 11(3) (2010), art. 16, § 176, W.B. 102e, M.D. 103g.)

f. *Copy for Each Defendant.*
In commencing any action, the plaintiff shall furnish the clerk of the court with one copy of his declaration, bill or other original pleading for each defendant other than those proceeded against by publication, and the clerk shall deliver the

copy to the sheriff with the summons. In serving each defendant, the sheriff shall leave with him a copy of the declaration, bill or other original pleading. Where there are five or more defendants the court may make other orders with respect to furnishing copies.
(G.E. 11(4) (2010), G.R.P.P. Pt. Three, IV, Rule 5(2054), W.B. 102f, M.D. 103k, 130c, 160b.)

g. *Process—To Whom Directed.*
Process requiring action by a person, including summonses for parties and witnesses, shall be directed to the person of whom such action is required.
Where the sheriff or other officer is required by law to take action, the process requiring him to do so shall be directed to the sheriff or such other officer.
(Art. 87, § 5, M.D. 1031.)

h. *Multiple Process—Residence of Defendant Doubtful or Wrongly Alleged.*
Upon the request of the plaintiff, where there is doubt as to the residence of a party against whom process is necessary, or the same be wrongly alleged, such process may be issued to as many counties within the State as may be directed, separately, concurrently or in combination, for service upon such party.
(Art. 16, § 221, W.B. 102d.)

Committee note.—Since a court cannot acquire jurisdiction to bind a party by a decree in personam unless he is within the territorial jurisdiction of the court or voluntarily submits to the jurisdiction, the provision of the statute allowing process to issue to places without the State has been omitted.

i. *Issuance to Another County by Clerk.*
When a clerk shall issue any process, to be served in a county other than that in which he is clerk, he shall issue the same for service by the sheriff, or other officer of such other county by whom the same ought to be served, and shall immediately mail such process to the clerk of such other court.
(Art. 75, § 173, W.B. 103b.)

j. *Delivery to Another County—By Any Person.*
Any process directed to be served in another county instead of being sent by mail, may be sent by any person, and upon proof of the delivery of the same to the sheriff or other officer to the satisfaction of the court from which the same was issued, such delivery shall have the same effect to charge the sheriff or other officer as if delivered under the provisions of this Rule and Rule 104 (Service of Process—Party).
(Art. 75, § 178, W.B. 103c.)

Rule 104. Service of Process—Party .....Gen'l.

a. *In or outside County.*
(1) The sheriff of any county from the court of which any process for a party may be issued may serve such process on the party named therein, wherever he may find such party, whether in or out of the said county; or
(2) The process may be sent to and served by the sheriff of any county where the party may chance to be, returnable to the court from which the process issued; and
(3) Process, when so served and returned, shall be equally effective in either case.
(Art. 75, § 154, W.B. 103a, M.D. 104b.)

b. *How Made.*
Service of process to require appearance shall be made by the sheriff:
(1) By delivering a copy of the process to the party to be served therewith; and
(2) In addition, in cases where a summons is issued pursuant to section b of

Rule 103 (Process—Issuance—Form and Return) by leaving with him a copy of the original pleading supplied to the sheriff by the clerk pursuant to the provisions of section f of Rule 103.
(G.E. 13(2011), art. 16, § 167, G.E. 11(4) (2010), G.R.P.P. Pt. Three, IV, Rule 5(2054), W.B. 165a and 102f, M.D. 104c.)

c. *On United States Lands.*
Process may be executed upon lands of this State obtained by or ceded to the United States of America pursuant to law.
(Proposed, M.D. 104e.)

d. *On Vessels in Navigable Rivers.*
Process on board vessels or ships in navigable rivers may be executed by the sheriff of either county bordering the same.
(Proposed, M.D. 104f.)

e. *Extradited Person—Immunity.*
A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of process as a defendant in an action arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.
(Art. 41, § 37, M.D. 104g.)

f. *Constructive Service—Resident.*
(Proposed, and as indicated, M.D. 104h.)

1. After Two Non Ests.
Where two or more successive summonses against a resident defendant have been returned *non est,* and proof is made by affidavit that reasonable efforts have been made to effect service upon such defendant; and
(Art. 16, § 152, W.B. 166.)

2. Evasion of Process.
Where one summons has been returned *non est,* and proof is made by affidavit that a resident defendant has secreted himself, or kept out of the way, to avoid service;
(Art. 16, § 152, art. 16, § 73 (last clause), W.B. 166, 170e.)

3. *Publication.*
The court may order that the defendant be proceeded against as though he were a nonresident, by giving notice by publication, pursuant to Rule 105 (Process by Publication).
(Proposed, art. 16, § 152, art. 16, § 73, W.B. 166, 170e.)

4. *Exceptions.*
This section shall not affect section d 4 of Rule 220 (Death—Substitution of Parties), in so far as it allows a party therein mentioned to be proceeded against as a nonresident, without prior return of non est.
(Proposed.)

Rule 105. Process by Publication .....Gen'l.

a. *Notice by Publication.*
Where an action may be maintained against a nonresident without personal service of process within this State, or where a person may be proceeded against as if he were a nonresident, notice by publication may be given as provided in this Rule.
(Art. 16, § 160, G.E. 10(2009), W.B. 167b.)

b. *Against Nonresident—As of Course.*

Where the defendant is a nonresident the clerk of the court may pass and issue an order of publication as of course, unless otherwise directed by plaintiff in writing.

(Art. 17, § 49, art. 16, § 177, W.B. 167a.)

c. *Other Cases—By Order of Court.*

In other cases an order of publication to notify a person who may be proceeded against as a nonresident shall be issued only pursuant to order of court.

(Art. 16, § 160, G.E. 10(2009), W.B. 167b.)

d. *Form—Contents—Service.*

The notice shall be published in one or more newspapers, shall state the substance and object of the original pleading, shall warn the party against whom it is issued to appear on or before the day fixed in the order and file his plea, answer or other defense within fifteen days thereafter.

1. Time of Publication.

The notice shall be published not less than once a week for four successive weeks, previous to fifteen days before the day fixed by the order for the appearance of the party, but the court may order additional publication, when deemed necessary.

2. Personal Service.

If a copy of the order be personally served on the party one month before the day fixed for his appearance, if he be within the limits of the United States, or three months if beyond, such service shall have the same effect as a publication.

3. Proof of Personal Service.

Proof of said service must be as follows: (a) if served by the sheriff, by his certificate; (b) if by any other person, by his affidavit or affirmation made and signed before a notary public and certified by him; (c) by the written admission of the defendant proved to the satisfaction of the court; and such certificate, affidavit, affirmation or admission shall state the time and place of service.

(Art. 16, § 160, G.E. 10(2009), W.B. 167b.)

Committee note. — See Code, Article 16, section 160 providing that a person making a false affidavit or false certificate as to service shall be guilty of perjury or making a false return.

e. *Registered Mail—Residence Known.*

Where personal service is not made, pursuant to subsections 2 and 3 of section d of this Rule, and the residence or whereabouts of the nonresident or person who may be proceeded against as such, is known, the plaintiff shall, in addition to making publication, mail to the defendant, by registered mail, with a request for a return receipt, a copy of the published notice and shall file in the proceedings an affidavit of the mailing thereof. In the event delivery of said registered letter cannot be effected by the post office, plaintiff may give the defendant notice of the fact that an action is pending against him by telephone, telegraph, or by any other means that may be available.

(Proposed.)

f. *Residence Unknown.*

1. *Affidavit before Judgment.*

Where notice by publication alone has been given, because the residence or whereabouts of the defendant is unknown, no interlocutory or final judgment for the plaintiff shall be given until an affidavit of the plaintiff shall be filed, which shall show to the satisfaction of the court that reasonable efforts to locate the defendant and to warn him of the pendency of the action, have been made. The failure of the plaintiff to make such reasonable effort in good faith, and to offer

proof thereof, shall be ground for the postponement or denial of the entry of a decree pro confesso, judgment by default or a final judgment.

2. *Exception—Where Prior Affidavit Filed.*

Provided, however, that where an affidavit that the defendant cannot be served, or has secreted himself or has attempted to avoid service, has previously been filed pursuant to section f of Rule 104, an additional affidavit need not be filed pursuant to subsection 1 hereof.

(Proposed.)

g. *Courthouse Door—Posting at.*

This Rule shall not affect provisions relating to the posting of process at or upon the courthouse door where such posting is required or permitted by general or local law or by Rule 745 (Judgment by Confession) and Rule ..... (Attachments) (pending).

(Proposed.)

Committee note.—Posting at the courthouse door is required by the following provisions of the Code of Public General Laws: Art. 9, sec. 46—Attachments: Art. 81—Unlocated Owner of Property in Tax Sale; Art. 83, sec. 3 — Sheriff Sales. No attempt is made to list here miscellaneous provisions of the various Public Local Laws relating to notice by posting.

h. *Exceptions.*

This Rule shall not require or permit process by publication in substitution for the following methods of service against:

(1) Foreign Corporations, pursuant to Code, Art. 23, Secs. 90 to 95, 86.
(2) Foreign Banking Institutions, pursuant to Code, Art. 11, Sec. 104.
(3) Foreign Insurance Companies having capital stock, pursuant to Code, Art. 48A, Sec. 31.
(4) Foreign Lloyds, pursuant to Code, Art. 48A, Sec. 145.
(5) Foreign Mutual Insurance Companies, pursuant to Code, Art. 48A, Sec. 222.
(6) Foreign Reciprocal Exchanges and Inter-Insurers, pursuant to Code, Art. 48A, Sec. 238.
(7) Foreign Fraternal Beneficial Associations, pursuant to Code, Art. 48A, Sec. 265.
(8) Foreign Installment Contract Companies, pursuant to Code, Art. 48A, Sec. 285.
(9) Unauthorized Foreign or Alien Insurers, pursuant to Code, Art. 48A, Sec. 337.
(10) Foreign Electrical Corporations, pursuant to Code, Art. 23, Sec. 381.
(11) Nonresident Real Estate Brokers or Salesmen, pursuant to Code, Art. 56, Sec. 226.
(12) Insurance, Surety or Bonding Companies having resident agents, pursuant to Code, Art. 75, Sec. 27.
(13) Nonresident Motorists, pursuant to Code, Art. 66½, Sec. 113.
(14) Nonresident Aviators, pursuant to Code, Art. 75, Sec. 159.
(15) Defendants in Ejectment Cases, by serving person in possession of land, pursuant to Code, Art. 75, Sec. 76.

Rule 111. Land Action ..... Gen'l.

a. *Method.*

In any action in which rights relating to land, including leasehold interests, shall be involved, if a defendant shall be a nonresident, or is returned *non est,* or if his whereabouts are unknown, such defendant may be proceeded against by publication, pursuant to Rule 105 (Process by Publication). The court may also

order the sheriff to set up a copy of the summons and of the original pleading, if any, upon the property.
(Proposed, art. 33A, § 2, art. 75, § 76, W.B. 630a, 642e.)

b. *Effect.*
Such notice by publication pursuant to Rule 105 (Process by Publication) shall be in all respects as effectual to bind the land and to affect the title thereto as if personal summons had been made upon such defendant; except that where a nonresident defendant shall not have been personally summoned, a judgment for the payment of money or costs shall not be entered against him personally.
(M.D. 111d.)

Rule 112. Renewal of Process—Dormant Process .....Gen'l.

a. *Returned Non Est—Renewal.*

1. Once as of Course, by Clerk.

Upon the return of the summons to a party endorsed *non est,* the same shall be renewed by the clerk as a matter of course, returnable to the next return day.

2. After Two Non Ests, to Lie Dormant.

After two returns of *non est,* the summons to a party shall be permitted to lie dormant, renewable only on the written order of the plaintiff to such future return day as the plaintiff may direct.

3. Further Renewal.

Thereafter, upon a further return of *non est,* said summons shall again be permitted to lie dormant, renewable only as aforesaid, the said plaintiff having the right to renew said summons to as many subsequent return days, under the same mode of procedure as may be deemed proper, until the same is executed.
(Art. 75, § 155, G.E 12. W.B. 105, M.D. 113a.)

Rule 113. Joint Obligors—Process against—Renewal .....Gen'l.

a. *Defendant Not Served—Renewal.*

Where process against joint and several obligors shall be returned summoned as to one or more and *non est* as to the others, the clerk may review the summons against those upon whom it has not been served.
(Art. 50, § 7, M.D 113b.)

Rule 114. Witness—Summons for .....Gen'l.

a. *Form and Contents.*
A summons for a witness shall be directed to the witness, shall state the name of the court, the room number of the court room, if any, and shall give the day and hour when the attendance of the witness is required, the caption of the action, and at whose request he has been summoned.
(Proposed.)

b. *Outside County.*

A summons for a witness residing in a different county from that in which the trial is to be had may be served either by the sheriff of the county where the witness resides, or by the sheriff of the county from which the summons issues. A witness upon whom such summons shall be served shall be liable to attachment and fine in like manner as if such witness resided in the county where the trial is had.
(Art. 75, § 171, W.B 104a.)

c. *Attachment.*

If a witness residing in a different county from that in which the trial is to be had shall be summoned, or has removed from such county after being summoned,

and shall fail to appear after being so summoned, an attachment may then issue for such witness to the sheriff of the county where said witness resides, returnable to the court issuing the same; and if the sheriff take such witness, he shall produce him before the said court to abide its sentence thereupon.
(Art. 75, § 172, W.B. 104b.)

d. *Application of Other Rules.*
Rule 103 (Process—Issuance—Form and Return), sections a, i and j, and Rule 104 (Service of Process—Party), sections b (1), d and e, shall apply to a summons for a witness.
(Proposed.)

Rule 115. Summons Duces Tecum .....Gen'l.

a. *Purpose.*
A summons to a witness, pursuant to Rule 114 (Witness—Summons for), may also command the person to whom it is directed to produce books, papers, documents or other tangible things designated therein.

b. *Control of Court.*
The court, on motion made promptly and in any event at or before the time specified in the summons for compliance therewith, may (1) quash or modify the summons if it is unreasonable or oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the summons is issued of the reasonable cost of producing the books, papers, documents or other tangible things. The court may direct that books, papers, documents or other tangible things designated in the summons be produced before the court at or prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties.
(Proposed.)

Rule 117. Elisor .....Gen'l.

a. *Appointment.*
Where the sheriff fails to make service of any process or where he is a party to or interested in an action so as to be disqualified from serving process, the court, on application of any party interested, upon good cause shown, may appoint an elisor to serve such process, which appointment shall be in writing, signed by the judge, and filed with the clerk issuing the process.
(Art. 75, § 180, W.B. 148; Proposed.)

b. *Powers.*
An elisor appointed as aforesaid shall have the same power as the sheriff has to serve process, and shall be entitled to the same fees therefor.
(Art. 75, § 181.)

c. *Vacancy—Appointment of Substitute.*
If any elisor dies or refuses to act, the court may appoint another in his place.
(Art. 75, § 182.)

Rule 124. Appearance .....Gen'l.

a. *How Made.*
An appearance may be made as follows:

1. *By Filing Pleading.*
By filing any pleading.

2. *By Written Request to Clerk.*
By filing with the clerk a written request for the entry of such appearance.

3. *Orally, in Open Court.*
Orally, in open court, with the permission of the court.

4. *Right to Object Specially Not Waived.*
An appearance does not waive the right to make special objections.
(Proposed.)

b. *Special Appearance Abolished.*
Special appearances are hereby abolished.
(Proposed.)

Committee note. — Heretofore an appearance, no matter how characterized, if in effect a general appearance, would have the result of binding the party appearing in subsequent proceedings in the case. A special appearance might be filed for the purpose of questioning the jurisdiction of the court, or if it was desired to quash summons or other proceedings. Keen v. Keen, 191 Md. 31, 41, 60 A. (2d) 200. This rule abolishes the necessity of special appearances and puts the emphasis on the nature of the defense asserted rather than the method by which it is asserted. Compare the discussion of Rule 12, F. R. C. P. in Barron and Holtzoff, Federal Practic and Procedure, sec. 343.

LAW

Rule 140. Commencement at Law .....Law

a. *Commenced by Filing Declaration.*
An action at law shall be commenced by filing a declaration, case by consent pursuant to Rule 329 (Special Case by Consent), or other original pleading.
(G.R.P.P. Pt. Three, IV, Rule 1(2054), W.B. 130a.)

b. *Titling Abolished.*
An action shall not be commenced by titling.
(G.R.P.P. Pt. Three, IV, Rule 1(2054), W.B. 130b.)

Rule 143. Costs, Prepayment (Limited Application) .....Law

a. *Deposit before Suit Docketed.*
The clerk shall not docket any action or issue any process until the plaintiff shall first deposit with the clerk, toward the payment of the costs of the clerk and sheriff for which the plaintiff is liable, the following sums, viz:

(1) For the clerk's costs for docketing such action, $2.50 in the counties and $3.75 in Baltimore City;

(2) For the services of the sheriff in serving the writ of summons on each defendant 75 cents in the counties and $1.35 for each corporate defendant and 95 cents for each other defendant in Baltimore City.
(Art. 24, § 11a, W.B. 133a.)

b. *Petition—In Forma Pauperis.*
Such deposit need not be made by any person, who by petition under oath filed in such action, shall satisfy the court that the petitioner is not able to make such deposit, and whose counsel shall certify that the petitioner's said action is meritorious, in which event the court shall pass an order allowing process to be issued and action taken without such deposit.
(Art. 24, § 11b, W B 133b.)

Committee note. — False swearing punishable as perjury, Code, Article 24, section 11b.

c. *Deposit Not Required in Certain Appeals.*
Such deposit shall not be required to be made in proceedings in the nature of an appeal to the common law courts of Baltimore City to have reviewed any de-

cision of the State Industrial Accident Commission, and in appeals from judgments rendered by the People's Court.
(Art. 24, § 11c, W.B. 133c.)

d. *Application.*

This Rule shall be applicable only in Baltimore City, Anne Arundel, Dorchester, Harford, Somerset, Wicomico and Worcester Counties.
(Art. 24, § 11d, W.B. 133d.)

EQUITY

Rule 170. Commencement in Equity .....Equity

a. *Commenced by Filing Bill.*

An action in equity shall be commenced by filing a bill, petition, or by special case by consent, pursuant to Rule 329 (Special Case by Consent).
(G.E. 3(2007), art. 16, § 174, W.B. 360.)

b. *Filing with Exhibits before Process or Relief.*

1. Exhibits.

Process shall not be made or issued upon any bill, until such bill, together with all the exhibits referred to as parts thereof, be actually filed with the clerk.

2. Injunction and Receiver Cases.

An injunction or restraining order, or order appointing a receiver shall not issue until the originals or duly certified copies of all instruments of record, and verified copies of all writings not of record, necessary to show the character and extent of the plaintiff's interest in the action shall have been filed with the clerk, if said instruments of writing be in possession of the plaintiff or accessible to him; if not, that fact shall be stated in the bill.
(G.E. 4(2007), art. 16, § 175, W.B. 161, M.D. 160c.)

Rule 174. Service of Process—Party under Disability .....Equity

In case a party be under disability, in addition to the service on such party as provided in section b of Rule 104 (Service of Process—Party), a copy of the process shall be left with the parent, guardian or other person having custody of an infant or with the committee or other person having the care or custody of the person or estate of the party alleged to be under disability, if there be such parent, guardian, committee or other person within the jurisdiction of the court; and the service of such copy shall be specifically certified in the return of the officer making the service.
(G.E. 13(2011), art. 16, § 178, W.B. 165b, M.D. 104d.)

Rule 178. Nonresident .....Equity

(W.B. 176.)

a. *Notice.*

If in any action respecting the sale, partition, conveyance or transfer of any real or personal property lying or being in this State, or to foreclose any mortgage thereon, or to enforce any contract or lien relating thereto, or concerning any use, trust or other interest therein, any defendant is a nonresident, the court may order notice to be given to such nonresident, by publication, pursuant to Rule 105 (Process by Publication).
(Art. 16, § 137.)

b. *Answer before Final Decree.*

Any nonresident, or person proceeded against as a nonresident, may appear

and answer at any time before final decree, on such reasonable terms as the court may prescribe.
(Art. 16, § 159.)

c. *Foreign Executors.*

1. May Be Made Party.

Where a nonresident has died, upon whose personal estate letters testamentary or of administration have not been issued in this State, but upon which estate foreign letters testamentary or of administration have been issued, it shall be sufficient in any action, in which said decedent or his executor or administrator was or would be a proper party defendant, to make such foreign executor or administrator a party defendant thereto. The making of such foreign executor or administrator a party defendant shall give the court the same jurisdiction over the personal estate of such decedent as if such executor or administrator had duly qualified in this State and had been made a party defendant.

2. Process against.

The foreign executor or administrator may in any such case, if a nonresident, be proceeded against by publication pursuant to Rule 105 (Process by Publication), or if within this State, by service of summons upon him.

3. Voluntary Appearance.

Said foreign executor or administrator may voluntarily appear to the action, or otherwise become or be made a party defendant as in other cases.

4. Letters in This State.

If letters testamentary or of administration of the estate of such decedent shall after the making of such foreign executor or administrator a party defendant be granted upon the estate of such decedent in this State, the executor or administrator so appointed may intervene in such action, and shall thereupon be substituted as a party defendant in place of said foreign executor or administrator, and shall thereafter represent the personal estate of said decedent.
(Art. 16, § 158.)

Rule 179. Nonresident under Disability .....Equity

a. *Notice to.*

Where a person non compos mentis and not residing in this State is a defendant, the court may order notice to be given such defendant pursuant to Rule 105 (Process by Publication). Where such defendant fails to appear and answer the bill or petition, the court may appoint an attorney for such defendant to conduct the proceedings on his behalf. The court, in its discretion, may order the attorney to be paid by the plaintiff or out of the interest of the defendant in any property subject to the jurisdiction of the court.
(Proposed. art. 16. § 149.)

b. *Sale of Property.*

1. Proof of Appointment of Foreign Guardian, etc.

Where a person *non compos mentis* owns property in this State and is a nonresident, and a guardian, committee or trustee has been appointed for said person in a foreign jurisdiction, either with respect to his real or personal property, and has qualified under the authority of a competent tribunal in said foreign jurisdiction, an exemplified copy of such qualification and appointment shall be full proof in a court of this State of the legality of the appointment and qualification of such guardian, committee or trustee.

2. Sale of Property.

The court. upon a bill or petition of such guardian, committee or trustee, shall order a sale of the property located within this State of such incompetent, if it shall appear to the court to be for the best interest of such incompetent, either at public or private sale.

3. Notice to Creditors.

Before a confirmation of such sale shall be made, it shall affirmatively appear to the court that a notice to creditors, to file claim, if any they have, has been given by public notice in one or more newspapers published in the county where the property lies, for at least thirty days, and in all other matters and things the usual practice as to sales in equity shall be followed.

4. Proceeds to Foreign Guardian, etc.

After the account has been stated and confirmed the court shall, upon proper application by the guardian, committee or trustee, direct that the net proceeds of any sale be transferred to the said guardian, committee or trustee of such incompetent in the foreign jurisdiction wherein the incompetent resides.
(Art. 16, § 150.)

Rule 180. Party Not Known to Be Alive or Resident—Unknown Successor in Interest .....Equity

a. *Notice to Party.*

In any action in equity involving any property, real or personal, within the jurisdiction of the court, including an action affecting the sale, lease, mortgage or other disposition of land, or of any funds which would descend as real estate, where the rights of a person who, if living, would be a proper party are involved or affected, and it is not known whether such person is living or dead, or whether such person, if living, is a resident or a nonresident, such person may be named as a party as if he were living and a resident. Service of process against such person shall be made, if possible, pursuant to Rule 104 (Service of Process—Party). When two or more successive summonses against such person have been returned *non est,* service of process shall be made pursuant to Rule 105 (Process by Publication).

b. *Notice to Successor in Interest.*

Where in an action in equity described in section a of this Rule it is not known whether the person who, if living, would be a proper party to the proceeding is living or dead, and the successor in interest of such person would be a proper party to the proceeding if such person is dead, but it is not known whether there is any such successor in interest of such person or whether any such successor in interest is a resident or a nonresident, then the successor in interest of such person not known to be living or dead may be named as a party defendant and described as the unknown heir, devisee or personal representative of such person notwithstanding that such person may also be named as a party defendant pursuant to section a of this Rule. Service of process against such unknown successor in interest shall be made pursuant to Rule 105 (Process by Publication).

c. *Application.*

This Rule shall apply whether the person to be made a party or the unknown successor in interest is or was a resident or a nonresident.
(Art. 16, §§ 155-157.)

Chapter 200.

Parties.

RULES 201-299

General

Law

Equity

GENERAL

Rule 203. Real Party in Interest .....Gen'l.

a. *Who May Be Deemed.*

Any of the following persons may bring an action in his own name without joining the person for whose benefit the action is brought:

(1) *an executor or administrator (section a of Rule 205 (Capacity—Representative));*
(2) *guardian of a minor (section c of Rule 205 and section a of Rule 275 (Capacity — Representative));*
(3) *prochein ami of a minor (section c of Rule 205 and section a of Rule 275);*
(4) *mother of an infant (section c of Rule 205);*
(5) *committee of an incompetent (section a of Rule 275);*
(6) *trustee of an express trust (section b of Rule 205);*
(7) *a person with whom or in whose name a contract has been made for the benefit of another;*
(8) *a municipal corporation;*
(9) *chartered county, or the board, county commissioners or other public officials of an unchartered county with which or whom or in the name of which or whom a contract is made for the benefit of its inhabitants or residents;*
(10) *a receiver appointed by a court;*
(11) *the assignee or trust of a bankrupt;*
(12) *an assignee for the benefit of creditors;*
(13) *or a person expressly authorized by statute to do so.*

(Proposed.)

b. *Suit in Name of State.*

When a statute of this State so provides, an action for the use or benefit of another shall be brought in the name of the State of Maryland.
(Proposed.)

Rule 204. Capacity—Individual—Own Right .....Gen'l.

a. *Married Woman.*

1. As if Unmarried.

A married woman may sue and be sued as fully as if she were unmarried; and upon judgment recovered against her, execution may be issued as if she were unmarried.
(Art. 45, § 5, W.B. 213a.)

2. Claim Arising Prior to Marriage.

An action for a debt, claim or demand contracted or arising prior to marriage, may be taken against a married woman, notwithstanding her coverture, in her married name. Judgment in such case shall be passed against the wife only, and shall operate only upon her estate held and owned by her prior or subsequent to said marriage.
(Art. 45, § 15, W.B. 213b.)

b. *Devisee of Deceased Debtor.*

Where a testator devises lands and dies in debt, any of his creditors may sue his devisees without making his heirs at law parties, unless such heirs are known to the plaintiff and reside in this State.
(Art. 75, § 167, W.B. 235j, M.D. 250j 1.)

Rule 205. Capacity — Representative .....Gen'l.

a. *Executor and Administrator.*

1. Action by.

An executor or administrator may commence and prosecute any personal action which the testator or intestate might have commenced and prosecuted.
(Art. 93, § 111, W.B. 217a.)

2. Action against.

An executor or administrator shall be liable to be sued in any action which might have been maintained against the deceased; and he shall be entitled to and answerable for costs in the same manner as the deceased would have been, and shall be allowed for the same in his accounts, if the court awarding costs against him shall certify that there were probable grounds for instituting, prosecuting or defending the action on which a judgment shall have been given against him.
(Art. 93, § 111 (1949, chs. 468, 568), W.B. 217c.)

3. Exception—Slander.

An executor or administrator may not sue or be sued in an action of slander which could have brought by or against his decedent.
(Art. 93, § 111, W.B. 217a, c, M.D. 205a 1, 2.)

b. *Trustee.*

1. Representation of Beneficiary.

In an action concerning real or personal estate, where the entire estate sought to be affected is vested in a trustee, under any instrument, with an immediate and unqualified power of sale, coupled with the right to give receipts, such trustee shall represent the person beneficially interested under the trust to the same extent as an executor or administrator in an action concerning personal estate represents the persons beneficially interested in such personal estate; and in such case it shall not be necessary to make the person beneficially interested under the trust, a party to the action.
(Art. 16, § 214, G.E. 29(2016), W.B. 686.)

2. Beneficiary May Be Made Party.

Any party interested may, upon his own application be allowed to come in and be made a party to such action and the court may, upon consideration of the matter on the hearing, order such person to be made a party.
(Art. 16, § 214, G.E. 29(2016), W.B. 686.)

c. *Infant — Suit by Mother — Tort.*

Where a tort shall be alleged to have been committed against any infant, and said infant is in the sole custody of its mother, the mother, in the first instance shall have the right to institute suit against the alleged tort-feasor or tort-feasors for and on account of such alleged tort; provided, however, that if the mother, within six months after the commission of the alleged tort, shall have failed to institute suit as aforesaid, then any person interested in said child, after having first given notice to its mother, by registered mail at her last known address, shall have a right to institute suit as next friend to such infant.
(Art. 93, § 163.)

d. *Receiver of Dissolved Corporation—Suit by.*

A receiver of a dissolved corporation shall not institute suit except by order of the court appointing him; and such suit may be brought in his own name as receiver or (notwithstanding its dissolution) in the name of the corporation, to his use.
(Art. 23, § 78.)

Rule 206. Capacity—Foreign Corporation .....Gen'l.

a. *Suit against.*

1. Doing Business.

A foreign corporation doing intrastate or interstate or foreign business in this State shall be subject to suit in this State by a resident or nonresident of this State on any cause of action arising out of such business and on any other cause of action whether the cause of action arose within or outside of this State.
(Art. 23, § 88, W.B. 212a.)

2. Ceasing to Do Business.

A foreign corporation which has heretofore done or hereafter does intrastate or interstate or foreign business in this State shall be subject to suit in this State by a resident or nonresident of this State on any cause of action arising out of such business, whether or not such foreign corporation has ceased to do business in this State.
(Art. 23, § 88, W.B. 212b.)

3. Contract Action by Resident.

A foreign corporation shall be subject to suit in this State by a resident of this State or by a person who has a usual place of business in this State on any cause of action arising out of a contract made or liability incurred, within or without this State, if when such contract was made or such liability was incurred such foreign corporation was doing intrastate or interstate or foreign business in this State, whether or not such foreign corporation shall have ceased to do business in this State.
(Art. 23, § 88, W.B. 212c.)

4. Liability for Acts Done within State.

A foreign corporation shall be subject to suit in this State by a resident of this State or by a person having a usual place of business in this State on any cause of action arising out of a contract made within this State or liability incurred for acts done within this State, whether or not such foreign corporation is doing or has done business in this State.
(Art. 23, § 88, W.B. 212d.)

b. *Suit by—Limitations on.*

An action shall not be maintained in any court of this State by any foreign corporation or by anyone claiming under a foreign corporation if such foreign corporation is doing or has done intrastate or interstate or foreign business in this State without having complied with Code, Article 23, section 120, until

(1) such foreign corporation or the person claiming under it shall have proved to the satisfaction of the court

(A) that such foreign corporation, or a foreign corporation successor thereto, has complied with Code, Article 23, section 86, or

(B) that neither such foreign corporation nor any foreign corporation successor thereto is continuing to do intrastate or interstate or foreign business in this State.
(Art. 23, § 87.)

Cross reference.—See Code, Article 23, section 87, for penalty for failure to qualify or register.

Rule 207. Capacity—Unincorporated Association; Miscellaneous .....Gen'l.

a. *Unincorporated Association.*

1. Action in Group Name.

An unincorporated association or joint stock company having a recognized

group name may sue or be sued in such group name in any action affecting the common property, rights and liabilities of such association or joint stock company. Such action shall have the same force and effect as regards the common property, rights and liabilities of such association or joint stock company as if it were prosecuted by or against all the members or shareholders thereof.
(Art. 23, § 134, W.B. 211a.)

2. No Abatement by Death, Dissolution, etc.

Such action shall not abate by reason of the death, resignation, removal or incapacity of any officer, member or shareholder or by reason of any change in the membership thereof or share ownership therein; and such action shall not abate by reason of the dissolution of any such association or joint stock company, but such action may be continued with such change of parties, if any, as the court in which the same is pending shall direct.
(Art. 23, § 134, W.B. 211b.)

b. *Lloyds'.*

In an action against any domestic, foreign or alien Lloyds' transacting business in this State, it shall not be necessary to name the individual underwriters as parties defendant, but such Lloyds' may be named as the party defendant.
(Art. 48A, § 145.)

c. *Reciprocal Exchanges and Interinsurers.*

Subscribers at reciprocal or interinsurance exchange operating under the laws of this State may sue or be sued in the declared name of the exchange.
(Art. 48A, § 238.)

d. *Cooperatives.*

1. Marketing Association.

A cooperative marketing association now or hereafter incorporated under Code, Article 23, sections 430-459, may sue and be sued, in the name of the association.
(Art. 23, § 330.)

2. Electric.

An electric cooperative incorporated under Code, Article 23, sections 460-492, shall have power to sue and be sued in its corporate name.
(Art. 23, § 356.)

Rule 220. Death—Substitution of Party .....Gen'l.

a. *Action at Law.*

1. Personal Action.

A personal action at law, including an action to recover damages for injuries to the person by negligence or default, shall not abate by the death of a party.
(Art. 75, §§ 29, 30, W.B. 235a, b, M.D. 250a 1, 2.)

2. Real or Quasi-Real Action.

An action of ejectment, waste, partition, dower or replevin shall not abate by the death of a party.
(Art. 75, § 29, W.B. 235a, M.D. 250a 1.)

3. Appeals — Issues from Orphans' Court.

Appeals from judgments rendered by justices of the peace, and trials of issues sent from Orphans' Courts, shall be governed by this section.
(Art. 75, § 29, W.B. 235a, M.D. 250a 1; art. 93, § 226, M.D. 250j 3.)

4. Exception—Slander.

Where a party to an action for slander shall die, the action shall abate as to such party.
(Art. 75, § 29, W.B. 235a, M.D. 250a 1.)

b. *Action in Equity.*

An action in equity shall not abate by the death of a party thereto, where the right involved in the action survives.
(Art. 16, § 1, W.B. 265a, M.D. 280a.)

c. *Motion by Successor in Interest.*

1. In Writing.

The successor in interest of any deceased party may appear, and, by motion in writing, suggesting the death of the decedent, be made a party to the action in place of such decedent, and prosecute or defend the same. Such motion shall be granted as of right.
(Art. 75, § 29, W.B. 235a, M.D. 250b 1; art. 75, § 30, W.B. 235b, M.D. 250c 1; art. 16, § 4, W.B. 265d, M.D. 280e; art. 16, § 241, W.B. 265m, M.D. 280c.)

2. Notice.

Upon the substitution of a successor in interest as a party, such notice to the opposite party shall be given as the court may direct.
(Art. 16, § 4, W.B. 265d, M.D. 280e.)

d. *Motion by Opposite Party.*

1. When Made.

If the successor in interest shall fail, within thirty days after the death of a deceased party, to file a motion to be made a party, the opposite party may, by motion in writing, suggest said death, setting forth when the death occurred, the identity of the successor in interest and how he succeeds to the interest of the decedent.
(Proposed; art. 16, § 2, W.B. 265b, M.D. 280b 1; art. 75, § 32, W.B. 235d, M.D. 250c 1.)

2. Process.

Upon the filing of such motion the court shall cause process to be issued for such successor in interest, pursuant to Rule 103 (Process—Issuance—Form and Return), Rule 104 (Service of Process—Party), and Rule 105 (Process by Publication), calling upon him to appear and prosecute or defend the action.
(Proposed; art. 75, § 29, W.B. 235a, M.D. 250b 1; art. 75, § 32, W.B. 235d, M.D. 250c 2, 3, 4; art. 16, § 3, W.B. 265c, M.D. 280b 2; art. 16, § 12, W.B. 265l, M.D. 280d; art. 16, § 241, W.B. 265m, M.D. 280c.)

3. Failure to Appear.

If the successor in interest shall fail, after being summoned or given notice by publication, to appear and prosecute or defend, the court may take action as in other cases of default, pursuant to Rule 309 (Default).
(Proposed; art. 75, § 31, W.B. 235c, M.D. 250b 2, 3; art. 75, § 32, W.B. 235d, M.D. 250c 3, 4; art. 75, § 37, W.B. 235i, M.D. 250i; art. 16, § 9, W.B. 265i, M.D. 280h 1.)

4. Evasion—Residence Unknown.

If the residence of any successor in interest be unknown, or he secrete himself, or in any manner evade the service of process, or leave the State, he may, upon proof of such fact to the satisfaction of the court, be proceeded against as if he were a nonresident.
(Art. 16, § 12, W.B. 265l, M.D. 280d; art. 16, § 10, W.B. 265j, M.D. 280h 2; art. 16, § 11, W.B. 265k, M.D. 280h 3.)

e. *Motion by Attorney.*

If the successor in interest of a deceased party and the opposite party shall both fail to suggest the death of a deceased party, the attorney for any person affected by the action may, by motion in writing, suggest the death. Upon the filing of such motion, or upon its own motion the court may issue an order directed to the

successor in interest calling upon him to appear and prosecute or defend the action or to the opposite party requiring him to cause the substitution of a proper party.

f. *Pleadings — Continuance — Dismissal.*

In cases subject to this Rule, the court may make such rulings with respect to pleading, or extension of time therefor, and grant such continuances as justice may require.

If substitution is not made within one year from the date of service of the order provided for in section e of this Rule, the action may be dismissed as to the deceased party.

(Proposed.)

g. *Joint Obligor — Death of — Judgment.*

Upon the death of one of the obligors against whom a joint action is pending, and the suggestion of such death by the plaintiff, and the making of the successor in interest of such deceased obligor a party defendant, pursuant to this Rule, the court may, in the event judgment be for the plaintiff, order a separate judgment to be rendered against said successor in interest, as if the original action had been brought separately against all the obligors.

(Art. 50, § 4, M.D. 250j 2.)

h. *Land, Action Involving — Infant Successor in Interest.*

Where a party in any action to recover lands, or in which the title thereof is involved, shall die, and the successor in interest shall be an infant, such action shall neither abate nor be suspended until the infant attains full age of twenty-one years; but the actual guardian, on motion of any party to the action, shall be made a party to prosecute or defend, and if there be no actual guardian, the court, on motion of any party, shall appoint a guardian ad litem, and the action shall proceed as if all parties were of full age.

(Art. 75, § 68, W.B. 548h, M.D. 250j 4.)

Rule 221. Marriage—Substitution of Party .....Gen'l.

An action at law or in equity, either original or upon appeal, shall not abate by reason of the marriage of any of the parties, but on application of any of the parties, the court, upon such terms and notice as to it shall seem proper, may allow and order any amendment of the pleadings and the making of any new and additional parties that such marriage may render necessary or proper.

(Art. 16, § 13; art. 75, § 38, W.B. 215a, M.D. 220a (Alt.).)

Rule 222. Dissolution of Corporation—Substitution of Party ..Gen'l.

An action by or against a corporation shall not abate by reason of the dissolution, forfeiture of charter, merger, or consolidation of such corporation. Such action may be continued with such change of parties as the court may direct.

(Art. 23, § 78, M.D. 220c (Alt.).)

Rule 225. Personal Representative—Removal—Substitution ..Gen'l.

a. *Successor to Be Substituted.*

If letters testamentary or of administration shall be revoked by the Orphans' Court and new letters granted, pending an action by or against the executor or administrator whose letters are revoked, proceedings to make the proper executor or administrator a party shall be had pursuant to Rule 220 (Death—Substitution of Party).

(Art. 93, § 273.)

b. *Scire Facias against Successor.*

If in the case mentioned in the preceding section, there has been a judgment rendered previous to the revocation of the letters, a scire facias shall issue upon such judgment against the substituted executor or administrator, suggesting the revocation of the letters of the former executor or administrator, and there shall be the same proceedings as in ordinary cases against executors and administrators.

(Art. 93, § 274.)

c. *Scire Facias against Removed Representative.*

If a judgment shall be obtained against an executor or administrator who has been made a party to a suit in the place of an executor or administrator whose letters have been revoked, and it shall not be found by the jury that the executor or administrator against whom such judgment has been rendered has assets sufficient to discharge the same, the plaintiff in such judgment may also issue a scire facias on such judgment against the executor or administrator whose letters have been revoked, suggesting that such executor or administrator did receive assets of the deceased, liable to such judgment, more than was paid over or delivered by such executor or administrator, to the persons obtaining the said letters testamentary or of administration; and if the same shall be controverted, it shall be ascertained by a jury in the same manner as in cases of scire facias suggesting assets against the second executor or administrator; and in case of a verdict and judgment being given against such former executor or administrator, execution may issue thereon in the same manner as against other executors or administrators, and the plaintiff may also sue the bond of such former executor or administrator.

(Art. 93, § 275.)

LAW

Rule 240. Assignee ..... Law

a. *Action in Own Name.*

An assignee of any legacy or distributive share of the estate of a deceased person and an assignee of a judgment or any chose in action for the payment of money arising out of contract may maintain an action or issue execution in his own name subject to the same defenses which could have been made against the assignor at the time of and before notice of the assignment.

(Art. 8, §§ 1, 4.)

b. *Action in Name of Assignor.*

An assignee of a chose in action arising out of tort shall sue in the name of the assignor for the use of the assignee.

(Proposed.)

c. *Death of Legal Plaintiff.*

When the legal plaintiff in any suit entered for the use of any person shall die before or after judgment, the person for whose use the same may be entered, or who may be entitled to the same, or his representative, may prosecute the same to judgment and satisfaction, as if the legal plaintiff had not died.

(Art. 8, § 5, W.B. 216c.)

Rule 243. Subrogee ..... Law

a. *Action by.*

Where the judgment sought, or any part thereof, shall inure to the benefit of a person claiming by reason of subrogation, the action shall be brought in the name of the real party or parties in interest including those claiming by subrogation.

b. *May Be Made Party Plaintiff.*

Upon petition of a defendant, the court shall order any person to be made a party plaintiff who claims the right to have all or any part of the judgment sought inure to his benefit by subrogation.
(Art. 75, § 3.)

Cross reference. — See section d-2 of Rule 313 (Joinder of Parties and Claims —Permissive).

EQUITY

Rule 275. Capacity — Representative .....Equity

a. *Guardian; Committee; Prochein Ami.*

1. Action by; Authority.

A person under disability to sue, may sue by his guardian or committee, or by his prochein ami; subject, however, to such orders as the court may direct for the protection of infants and other persons; but before the name of any person shall be used in any action to be instituted as next friend of any infant, such person shall sign a written authority to the attorney for that purpose, and such authority shall be attached to the original pleading.
(G.E. 9(2009), art. 16, § 180, W.B. 695d.)

2. Guardian or Committee to Answer.

Upon return of process as served, or upon proof of due publication of the order of publication as against a nonresident defendant, the court shall, in case of a person under disability, on application of the plaintiff, or any other party concerned, by order reqiure the legal guardian or committee of the person under disability (if there be such guardian or committte within the jurisdiction of the court) to appear, answer and defend for such party.
(G.E. 14(2011), art. 16, § 179, W.B. 695b.)

3. Appointment of Guardian Ad Litem.

The court may at any time, if it shall appear to be for the best interest of a person under disability, appoint a guardian ad litem to answer and defend the suit for such party. A person shall not be appointed who may have any interest whatever involved in the suit adverse to that of the party so under disability. The court may, in any case, whenever it may be deemed necessary, appoint an attorney, to appear and defend for any person under disability.
(G.E. 14(2011), art. 16, § 179, W.B. 695a.)

b. *Unborn Child — Person Not in Being.*

1. Appointment of Guardian Ad Litem—Counsel.

In an action in equity which may affect the interest of any person not in being the court may, upon application of any party, appoint a guardian ad litem to appear for and answer on behalf of such person not in being and, in its discretion, may appoint a solicitor for such guardian ad litem; and
(Art. 16, § 265, W.B. 268a.)

2. Binding Effect of Order or Decree.

A judgment thereafter passed in said action shall be binding upon such person not in being to the same extent as if such person were in being at the date of the institution of such action and had been duly served and had appeared and answered therein.
(Art. 16, § 265, W.B. 268a.)

Rule 282. Want of Party .....Equity

If any person has been omitted as a party plaintiff or defendant in an action in equity, it shall not be necessary to file an amended bill or petition, but on a

short petition setting forth his interest in said action, he shall be made a party plaintiff, or if a defendant, the court shall cause process to be issued for said omitted person, pursuant to Rule 103 (Process — Issuance — Form and Return), Rule 104 (Service of Process — Party) and Rule 105 (Process by Publication). Said short petition shall be taken and considered as part of the original bill or petition.

(Art. 16, § 241, W.B. 265m, M.D. 280c.)

Committee note.—General Equity Rule 33 provides for setting a cause for argument upon the objection that the bill is defective for want of parties made by demurrer or answer. The Committee felt that this provision need not be retained in view of Rule 323 (Motion Raising Preliminary Objections).

Rule 283. Misjoinder — Party or Subject Matter — Effect ....Equity

It shall not be necessary to dismiss the entire bill or petition in any action, because of the misjoinder of a party or of the subject matter of the suit; but the court may dismiss the bill or petition, as to such party as may be improperly joined, and may dismiss the bill or petition, as to such of the subject matter as may be improperly joined, so as to relieve the bill or petition of the objection of being multifarious.

(G.E. 31(2016), art. 16, § 215, W.B. 262.)

Chapter 300.

Pleading.

RULES 301-399

General

Law

Equity

GENERAL

Rule 301. Form and Contents ..... Gen'l.

a. *In Writing.*

A pleading shall be in writing except a plea in bar made orally in open court pursuant to Rule 342 (Plea in Bar) or a motion in open court.

b. *Necessary Facts Only.*

A pleading shall contain only such statements of fact as may be necessary to constitute a cause of action or ground of defense, except as may otherwise be necessary for purposes of demurrers and motions. It shall not include (a) argument; (b) inference; (c) matter of law or evidence; (d) matter of which the court may take notice *ex officio;* (e) unnecessary recitals of documents; or (f) any impertinent, scandalous or irrelevant matter.
(Art. 75, § 2, W.B. 330a; G.E. 5(2008), art. 16, § 185, W.B. 361a.)

c. *To Be Concise.*

A pleading shall be brief and concise.
(G.E. 5(2008), art. 16, § 185, W.B. 361a.)

d. *Clear Statement Sufficient.*

Any pleading which contains a clear statement of the facts necessary to constitute a cause of action or ground of defense shall be sufficient without reference to mere form, and it shall not be necessary to state time or place in a pleading except where time or place forms a part of the cause of action or ground of defense.
(Art. 75, §§ 3, 5, 6, W.B. 330b, d, e.)

e. *Cumulative and Alternative Pleading Allowed.*

Subject to section b, 2, of Rule 331 (Plea — Dilatory), a party in any action may plead in answer to any pleading, cumulatively or in the alternative, as many matters as he may deem necessary regardless of consistency.
(Art. 75, § 12, W.B. 333c, M.D. 332c, 333b.)

f. *Name and Address.*

An original pleading shall contain, either in the titling or introductory part thereof, or in such other place as may be appropriate, the names and addresses of all parties to the case, if such names and addresses are known to the person filing the pleading. Should the address of a party be unknown it shall be so stated. The first pleading filed by a party against whom relief is sought shall contain the name and address of any party omitted from, or incorrectly stated in, the pleadings previously filed if such name and address are known to the person against whom relief is sought.
(G.E. 6(2008), art. 16, § 186, W.B. 362a; G.E. 8(2009), art. 16, § 188, W.B. 362c; Sup. Bench Rule 301; M.D. 301d.)

g. *Address of Counsel.*

The first pleading filed by an attorney shall contain his address immediately below his signature, followed by his telephone number, if any.
(Proposed; M.D 301e.)

h. *Descriptive Title*

A pleading shall bear a brief descriptive title immediately below the titling of the case indicating the nature of the pleading, such as "Declaration", "Bill of Complaint", "Demurrer", "Plea", "Answer", etc., and in a county where backings are used, the same notation shall be placed on the backing.
(Proposed; Sup. Bench Rule 302(e); M.D. 301f.)

i. *Disability to Be Stated.*

If a party be known to be under a disability, such fact shall be stated in the original, or any subsequent, pleading.
(G.E. 8(2009), art. 16, § 188, W.B. 362c, M.D. 301g.)

j. *Unnecessary or Improper Matter.*

Unnecessary, impertinent, scandalous, irrelevant or other improper matter in any pleading may, by order of court, upon motion, or upon its own initiative, be stricken out at the cost of the party introducing the same, or the court, in its dis-

cretion, may require the filing of an amended pleading from which such unnecessary or improper matter shall be omitted.
(G.E. 5(2008), art 16, § 185. W.B. 361b, M.D. 301h; Proposed.)

k. *Corporate Seal Unnecessary.*
It shall not be necessary for a pleading of a corporation to be under the corporate seal.
(Art. 16, § 251. W B. 361d, M.D. 301i.)

Rule 302. Attorney—Signature—Effect .....Gen'l.

The signature of an attorney of record to a pleading shall constitute a certificate of such attorney that he has read such pleading; that upon the information and instructions received by him regarding the case there is good cause or ground for the pleading; and that the pleading is not filed for delay, or other improper purpose.
(G.E. 5(2008), art. 16, § 185, W.B. 361c.)

Rule 303. Verification .....Gen'l.

a. *Not unless Expressly Required.*
A pleading need not be verified unless specifically required by these Rules or by statute.
(Proposed.)

b. *By Whom Made.*
Where a pleading is required to be verified such verification shall be made by the party on whose behalf it is filed subject to the following provisions:

1. *State or Political Subdivision.*
A pleading of the State of Maryland, a municipal corporation, a county or other political subdivision shall be verified by the attorney who files the same, or by the officer or agent who is authorized to cause the action to be brought or defended.

2. *Corporation*
A pleading of a corporation shall be verified by an officer or other person duly authorized to make an affidavit on its behalf, or if it has no such officer or other person available in the State, by its attorney.

3. *Other Parties—Exceptions.*
Where a pleading is required or permitted to be verified by a person other than the party in whose behalf it is filed, it shall be verified as follows:

(a) *If the party be absent from the State, or mentally incapable of making an affidavit, or physically unable to attend before a person authorized to administer oaths, the pleading may be verified by his attorney or agent, in which case the affidavit shall state the absence, or mental or physical condition of the party.*

(b) *A joint pleading of several parties who are united in interest, may be verified by any one of them.*

(c) *A pleading of a party under disability may be verified by the person authorized to file it in his behalf.*

4. *Requirement of Verification in Person.*
On motion of any party who shall file an affidavit stating that the motion is not made for delay, and further stating his belief that an adverse party, whose pleading has been verified by a person other than himself, knows that a statement in the affidavit mentioned is untrue, the court, if such statement be material, shall require such adverse party to verify the pleading personally; and, if he fails within fifteen days after the order requiring him to do so has been served upon him, or his attorney, the court shall treat the pleading with regard to him as if it had not been filed.

5. *Effect of Verification.*

Verification of a pleading shall not make other or greater proof necessary on the part of the adverse party than would have been necessary if the pleading had not been verified.

(Proposed; M.D. 303e (Alt.).)

Rule 306. Service of Pleading .....Gen'l.

a. *Pleading Requiring Service.*

1. What Must Be Served—When Required.

A pleading or notice shall be served upon the party to be affected by it, or his attorney of record (except when in open court the defendant shall have obtained leave to file a plea in bar orally).

2. Clerk Not to Receive without Proof of Service.

The clerk shall not accept or file any paper requiring service other than an original pleading unless it is accompanied by an admission or proof of service of a copy thereof upon the opposite party, or his attorney of record.

(G.R.P.P. Pt. Two. V, Rule 1(a) (2046), W.B. 301a.)

b. *When Not Required—Party in Default—New Claim.*

Service need not be made on a party in default for failure to appear or file a pleading, except that a pleading asserting a new or additional claim for relief against a party shall be served upon him.

(G.R.P.P. Pt. Two, V, Rule 1(b) (2047), W.B. 301b.)

c. *Method of Service—On Attorney unless Otherwise Ordered.*

When service of a pleading or notice is to be made upon a party represented by an attorney of record, the service shall be made upon such attorney unless actual service upon the party is ordered by the court. Service upon the attorney or the party may be made by any person over twenty-one years of age, and shall be made in any of the following ways:

1. Personal Service.

By delivering a copy of the pleading or notice to the person to be served personally, or by leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, or the office is closed, or the person to be served has no office, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

2. Service by Mail.

By mailing a copy of the pleading or notice to the person to be served at his business address, or if that is not known, to his residence; service by mail shall be considered as having been made one day after the day of mailing, if in the same city or county, and one day additional for each 500 miles or fraction thereof between the place of mailing and the place of address; or

3. Service by Other Methods.

If for any reason service cannot reasonably be made by personal service or by mailing, then service shall be made by such other method as the court may order upon motion *ex parte.*

(G.R.P.P. Pt. Two. V, Rule 1(c) (2047), W.B. 301c.)

4. Persons under Disability.

If a party defendant be a person under disability for whom a legal guardian, committee or trustee may have been required by the court to appear, answer and defend, or for whom a *guardian ad litem* may have been appointed, service may be made upon such legal guardian, committee or trustee, or *guardian ad litem,* or upon his attorney of record.

(Art. 16, § 204, W.B. 374f.)

d. *Proof of Service.*

In the absence of a written admission of service by the attorney or party to be served, the certificate of the person who shall have made such service, showing the date thereof and the manner of making the same in accordance with this Rule, shall be *prima facie* proof of such service.
(G.R.P.P. Pt. Two, V, Rule 1(d) (2047), W.B. 301d.)

Rule 307. Time for Original Defense .....Gen'l.

a. *15 Days.*

1. After Return Day.

The defendant in any action shall file with the clerk a pleading asserting his defenses within fifteen days after the return day to which he is summoned.
(G.R.P.P. Pt. Three, IV, Rule 6(a) (2054), G.E. 11(5) (2011), W.B. 107.)

2. Order of Publication.

Where an order of publication shall have been passed and the notice by publication therein prescribed shall have been given, the defendant shall file a pleading asserting his defenses within fifteen days after the time limited by such order for his appearance.
(G.E. 16 (2012), W.B. 765c.)

b. *Court May Modify.*

For good cause shown, the court may at any time, by order, shorten or extend the time allowed for filing any pleading.
(G.R.P.P. Pt. Three, IV, Rule 6(c) (2055), W.B. 137c.)

c. *Application.*

This Rule shall apply to proceedings concerning attachments, replevin and scire facias.
(Proposed.)

d. *Exceptions.*

The following statutes and rules are not superseded by this Rule:
(1) Nonresident, section b of Rule 178.
(2) Decree pro confesso, section a(3) of Rule 765 (decree pro confesso).
(3) Nonresident motorists, Article 66½, section 113, Code of Public General Laws.
(4) Tax sale—Redemption, Article 81, section 104, Code of Public General Laws.
(Proposed.)

Rule 308. Time after Original Defense .....Gen'l.

a. *15 Days.*

After the defendant shall have filed his original plea, answer or other defense, each subsequent pleading, except a motion to implead a third party, shall be filed within fifteen days after the filing of said preceding pleading, or after the date of the court's disposition thereof, whichever shall be later.
(G.R.P.P. Pt. Three, IV, Rule 6(a) (2054), W.B. 137a.)

b. *Enlargement by Motion, Demurrer, Demand for Particulars or Exception.*

Where a motion, demurrer, demand for particulars or exception or other pleading requiring a ruling by the court or compliance by a party is filed, the time for pleading shall be enlarged, without special order, to fifteen days after compliance with the demand or disposition by the court of such motion, demurrer or exception.
(G.R.P.P. Pt. Three, IV, Rule 6(b) (2055), W.B. 137b.)

c. *Court May Shorten or Extend.*
The court at any time by order may shorten or extend the time allowed for filing any pleading.
(G.R.P.P. Pt. Three, IV, Rule 6(c) (2055), W.B. 137c.)

Rule 309. Default .....Gen'l.

a. *By Plaintiff.*
If a plaintiff is in default, for failure to comply with the requirements as to time allowed for pleading, a judgment of non pros may be rendered against him at law, or his action may be dismissed in equity, on motion of the opposite party, or by the court without motion.
(Proposed.)

b. *By Defendant*
If a party is in default for failure to comply with the requirements as to time allowed for pleading, unless the time be enlarged by the court, for good cause shown, judgment may be entered against him in an action at law or the bill may be taken pro confesso in a proceeding in equity, on motion of the adverse party, and thereupon the case shall proceed *ex parte* as against such party.
(G.R.P.P. Pt. Three, IV, Rule 7 (2055), G.E. 15 (2011), W.B. 108, G.E. 16 (2012), W.B. 765c; art. 75, §§ 156-7, W.B. 135a, b.)

Rule 310. Admission by Failure to Deny .....Gen'l.

a. *Partnership—Incorporation—Written Instrument—Motor Vehicle.*
Whenever the partnership of any parties, the incorporation of any alleged corporation, the execution of any written instrument filed in the action, or the ownership of a motor vehicle is alleged in the pleadings in any action, such fact shall be deemed to be admitted in so far as such action is concerned, unless it shall be denied by the next succeeding pleading of the opposite party to the merits.
(Art. 75, § 28 (108-9), W.B. 331a, b, M.D. 340a, b.)

b. *Court May Require Proof.*
Notwithstanding an admission by the pleadings, the court may, in its discretion, require proof of any allegation as justice may require.
(Proposed.)

Rule 311. Joinder of Issue .....Gen'l.

Formal joinder of issue shall not be necessary in any action.
(Proposed.)

Rule 313. Joinder of Parties and Claims—Permissive .....Gen'l.

a. *Joinder of Claims.*
The plaintiff may join in one action either as independent or as alternate claims as many claims as he may have against the defendant, but several plaintiffs, whose interests are not united, may not join in one action against the defendant, unless a common question of law or fact exists as set forth in subsection 1 of section d of this Rule.
(G.R.P.P Pt. Two. III, Rule 2(a) (2040), W.B. 305b.)

b. *Successive Remedies.*
Where a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.
(G.R.P.P. Pt. Two, III, Rule 2(b) (2040), W.B. 305c.)

c. *Joinder in the Alternative.*

1. Several Defendants.

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

2. Several Plaintiffs.

Where several persons are uncertain as to which of them is entitled to a claim or to relief, any or all of them may join as plaintiffs in the alternative although the claim or right to relief by one may be inconsistent with the claim or right to relief by the other.

(G.R.P.P. Pt. Two. III, Rule 2(c) (2041), W.B. 305d.)

d. *Multiple Joinder.*

1. Separate Claims—Common Question of Law or Fact.

Separate claims involving different plaintiffs or defendants or both may be joined in one action whenever any substantial question of law or fact common to all the claims will arise in the action or for any other reason the claims may conveniently be disposed of in the same proceeding; the claims joined may be joint, several, or in the alternative, as to plaintiffs or defendants or both.

2. New Plaintiff.

Any person may join in the action as plaintiff who demands any relief on any of the claims joined, and he need not be interested in the other claims or in obtaining all the relief demanded.

3. New Defendant.

Any person may be joined as a defendant against whom any relief is demanded on any claim, and he need not be interested in defending against the other claims or all the relief demanded.

(G.R.P.P. Pt. Two. III, Rule 2(d) (2041), W.B. 305e.)

e. *Judgments among Multiple Parties.*

Where the action involves more than one plaintiff or defendant or both, judgment may be given for one or more of the plaintiffs according to their respective right to relief, and against one or more of the defendants according to their respective liabilities.

(G.R.P.P. Pt. Two, III, Rule 2(e) (2041), W.B. 305f.)

f. *Application to Counterclaim, Cross-Claim and Third-Party Claim.*

This Rule shall apply to a counterclaim as if the party asserting it had brought an independent action; and shall apply in like manner to a cross-claim or third-party claim if Rules 314 (Counterclaim and Cross-Claim) and 315 (Third-Party Practice), respectively, are also complied with.

(G.R.P.P. Pt. Two. III, Rule 2(f) (2041), W.B. 305g.)

Rule 314. Counterclaim and Cross-Claim .....Gen'l.

a. *Counterclaim.*

1. Right to Plead Counterclaim.

In any action any party, against whom a claim, counterclaim, cross-claim or third-party claim has been asserted, may plead as a counterclaim any claim he has against any opposing party.

2. Nature of Counterclaim.

The counterclaimant may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposite party, and need not diminish or defeat the recovery sought by the opposing party.

3. Subsequent Counterclaim.

A claim which either matured or was acquired by the pleader after serving his

pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.
(G.R.P.P. Pt. Two. III, Rule 3(a) (2041), W.B. 306a.)

b. *Cross-Claim against Co-Party.*
In any action any party may plead as a cross-claim any claim he has against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.
(G.R.P.P. Pt. Two III, Rule 3(b) (2041), W.B. 306b.)

c. *Additional Parties.*
When the presence of a party other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order him to be brought in as defendant, if jurisdiction over him can be obtained, within such time as the order may provide.
(G.R.P.P. Pt. Two, III, Rule 3(c) (2042), W.B. 306c.)

d. *Form and Contents—Time for Filing—Process.*

1. *Form and Contents.*
Rules 301 (Form and Contents), 302 (Attorney—Signature—Effect) and 303 (Verification) shall apply to a counterclaim and a cross-claim, mutatis mutandis; but a counterclaim or cross-claim shall be filed as a separate and distinct pleading, appropriately captioned, and shall not be combined with the responsive pleading.

2. *Time for Filing.*
A counterclaim or cross-claim shall be filed within the time for filing the responsive pleading to the claim, counterclaim, cross-claim, or third-party claim to which the counterclaim or cross-claim is filed.

3. *Process.*
If a new party is not brought in, service of a copy of the counterclaim or cross-claim on the attorney for the opposing party shall be sufficient, but where another person is made a party, pursuant to section c of this Rule, Rule 103 (Process to Party), Rule 104 (Service of Process on Party) and Rule 105 (Process by Publication) governing process or publication against original parties defendant shall apply.
(Art. 16, § 199, W.B. 365a; Proposed.)

Rule 315. Third-Party Practice .....Gen'l.

a. *When Defendant May Bring in Third Party.*
Where the defendant in an action claims that a person not a party to the action is or may be liable to him for all or part of the plaintiff's claim against him, he may at any time after commencement of the action cause to be served a summons and third-party claim, together with a copy of the previous pleadings, upon such third party. The defendant shall also cause a copy of the third-party claim to be served on the plaintiff.

b. *Motion More than 30 Days after Issue.*
If more than 30 days have elapsed after the action is at issue such summons on a third party shall be issued only upon consent of the plaintiff or upon a showing that the delay was excusable or does not prejudice other parties to the action.

c. *Third Party's Defenses.*

1. On Own Behalf.
When so served, the third party shall make his defense to the defendant's claim, and may assert any counterclaim he may have against the defendant, and any

cross-claim he may have against other third parties, in the same manner as in an original action.

2. On Behalf of Defendant.

The third party may also assert against the plaintiff on behalf of the defendant any defenses which the defendant has to the plaintiff's claim.

d. *Related Claims between Plaintiff and Third Party.*

1. Claims of Plaintiff and Third Party against Each Other.

The plaintiff or the third party may assert against the other in the pending action any claim he has against the other party which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant, and the claim may be asserted by an amended or separate pleading, or as a counterclaim.

2. If Claims Are Asserted.

If either party asserts such a claim, the other party shall assert his defenses thereto, and may assert any counterclaim or cross-claim he may have against the other party, in the same time and manner as in an original action.

3. When Plaintiff May Not Assert Separate Claim.

The plaintiff may not assert against the third party in a separate action, instituted after the third party is impleaded, any claim which arises out of the transaction or occurrence that is the subject matter of his claim aganist the defendant in the pending action.

(G.R.P.P. Pt. Two, III, Rule 4(c) (2042), W.B. 205c.)

e. *Conduct of Proceedings.*

1. *Court to Regulate.*

Any party may move for severance, separate trial or dismissal of the third-party claim. The court may make orders to regulate the conduct of the proceedings to prevent injustice or unnecessary delay or expense for any party, and may designate whether the various opposing claims shall be tried together or separately, as justice may require.

2. Judgments.

The court may render one or more judgments on the claims asserted in the action upon such terms as are appropriate to protect the rights of the interested parties, but no judgment shall be rendered for the plaintiff or the third party against the other where no claim has been asserted pursuant to the provisions of subsection 1 of section d of this Rule.

3. *Res Adjudicata.*

Unless the court orders otherwise, the adjudication of the defendant's liability to the plaintiff shall be *res adjudicata* as to the third party as well as to the plaintiff and defendant.

f. *Additional Parties.*

1. By Third Party.

A third party may proceed under this Rule against any person who is or may be liable to him for all or part of any claim made against him in the action.

2. By Plaintiff

Likewise, when a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under the same circumstances as would entitle a defendant to do so under this Rule.

(G.R.P.P. Pt. Two, III, Rule 4(e) (2043), W.B. 205e.)

Rule 320. Amendment .....Gen'l.

a. *Scope and Purpose.*

1. Process, Pleadings and Record.

The court may permit any of the proceedings, including process, pleadings, and record, to be amended so that the case may be tried on its merits.

2. Action to Another Form.

An action may be amended from one form to another.

3. Additional Particulars.

The court may permit a further or better statement of particulars of any matter in any pleading to be made at any time.

4. Defects Disregarded.

The court at every stage of the proceedings shall disregard any error or defect in process, pleadings or record which does not affect the substantial rights of the parties.

(Art. 75, § 39, W.B. 340a; G.E. 17(2012), art. 16, § 18, W.B. 374a; G.E. 20-(2013), art. 16, § 196, W.B. 363c 4.)

b. *As to Parties.*

1. Misnomer—Misjoinder—Nonjoinder—Omission of Heir or Devisee.

A writ or action shall not abate by reason of the misnomer of a party, or the nonjoinder or misjoinder of a party, or by the omission of an heir or devisee. In every such case the court shall allow such amendments as justice may require in order to effect a fair trial.

(Art. 75, §§ 41. 42, 43, 46, W.B. 340b, c, e, h, M.D. 320f 1.)

2. Exception.

(a) Nonjoinder or Misjoinder.

When an amendment is allowed for nonjoinder or misjoinder, some one of the original plaintiffs and some one of the original defendants must remain as parties to the action.

(Art. 75, § 45, W.B. 340d, M.D. 320f 3.)

3. Person under Disability—Nonresident.

Whenever during the course of a proceeding it is discovered that any party is under disability, or a nonresident, the proceedings may be amended by making new parties or such other provisions as the exigencies of the situation may require, without requiring an entirely new proceeding or pleadings, unless the court shall deem the same necessary to promote justice; and in any case such new party shall be entitled to plead or otherwise act as if he was an original party.

(Art. 16, § 19, W.B. 374d, M.D. 320f 2.)

c. *Time for Amendment.*

1. Before Trial—Trial before Court.

In a case heard or tried before the court without a jury, any amendment may be made at any time before a final judgment or decree is entered.

(Art. 75, §§ 39, 44, W.B. 340a; G.E. 17(2012), art. 16, § 18, W.B. 374a; M.D. 320b 2.)

2. Trial before Jury.

In a case tried before a jury, an amendment may be made at any time before the jury retires to make up its verdict.

(Art. 75, §§ 39. 44, W. B. 340a, M.D. 320b 1.)

3. Time to Perfect.

A party having obtained leave to amend shall make the amendment within five (5) days, unless such time is extended or shortened by leave or order of court.

(Proposed.)

d. *Procedure.*

1. Motion for Amendment.

(a) Oral or Written.

A motion to amend may be made orally in open court or in writing.
(Proposed.)

(b) Leave of Court.

An amendment shall not be made without leave of court but leave to amend shall be freely granted in order to promote justice. Such leave to amend shall be in writing, unless given in open court, in which event it may be oral.
(Proposed; M.D. 320c 1.)

(c) Amendment in Writing.

An amendment, when allowed, shall be made in writing.
(Proposed.)

(d) New Matter in Responsive Pleading.

When new matter is alleged in a responsive pleading which requires the amendment of the pleading responded to, such pleading responded to may be amended either on motion or without, and with or without leave of court.
(Art. 16, § 203, W.B. 370b, M.D. 320g.)

(e) When Not Required.

Where a demurrer to any pleading is sustained, the court, in its discretion, may allow an amendment of such pleading in its order sustaining the demurrer, and no motion or petition to amend shall be necessary.
(G.E. 19(2013), art. 16, § 193, W.B. 374b, M.D. 320g.)

2. Service of Copy, Notice and Process—Exception.

(a) On Original Parties.

A copy of an amended pleading, or other proceeding, or, if amendment by interlineation is permitted, a written notice of the scope and extent of the amendment, shall be served upon the party to be affected by such amendment or his attorney of record, pursuant to Rule 308 (Time after Original Pleading).
(G.E. 22(2014), W.B 374c; art. 16, § 204, W.B. 374f; M.D. 320c 2.)

(b) On New Parties.

Service upon a new party of a copy of an amended pleading as well as a copy of all preceding pleadings, if any, of which he ought to be informed, shall be in accordance with Rule 103 (Process to Party), Rule 104 (Service of Process on Party) and Rule 105 (Process by Publication).
(Proposed.)

(c) Exception.

Service shall not be required of an amendment allowed in open court, unless otherwise ordered, except that service shall be made on a new party.
(Proposed.)

3. Response—New or Additional.

Where an amendment is made, and new facts are introduced, or the case is varied in any material respect, the opposite party shall be at liberty to file such new or additional response to the amended pleading as may be necessary; and it shall not be necessary to obtain leave of court before so doing.
(G.E. 22(2014), W.B. 374c; art. 16, § 204, W.B. 374f, M.D. 320c 3.)

4. Response—Time for Making.

Where a new or additional response is to be made, it shall be filed within the time remaining for filing the response to the unamended pleading or other proceeding, or within fifteen days after service of a copy of the amendment, or notice thereof, whichever period may be longer, unless otherwise ordered by the court.
(Proposed; M.D. 320c 4.)

5. Failure to Amend.

If a party, having obtained leave to amend, shall not make the amendment within five days or such other time as may be specified by the court, he shall be con-

sidered to have abandoned the leave to amend, and the case shall proceed as if no application for such leave had been made.
(Art. 16, § 204, W.B. 374e, M.D. 320c 5.)

6. Default in Responding to Amendment.

(a) Party Who Has Not Responded.

If a new party or an original party who has not responded shall fail to file his response within the time allowed, the case shall proceed in the same manner as if a party had failed to respond to an original pleading.

(b) Party Who Has Responded.

If an original party who has responded shall fail to file an additional response within the time allowed, the case shall proceed and the response previously filed shall be deemed to be a response to the amended pleading.
(Art. 16, § 204, W.B. 374g, M.D. 320c 6.)

e. *Continuance upon Amendment.*

1. Before Trial—Trial before Court.

Where an amendment is allowed before trial is begun, or after trial is begun before the court without a jury, no continuance shall be allowed, unless the court is satisfied that the ends of justice so require.
(Art. 75, § 40, W.B. 340f, M.D. 320d 1.)

2. Trial before Jury—Withdrawal of Juror—Mistrial.

Where an amendment is allowed after a jury is sworn, the jury may proceed or continue to try the case after the amendment has been made, unless the court shall consider a continuance necessary for a fair trial, in which event a juror shall be withdrawn, and a mistrial declared.
(Art. 75, § 48, W.B. 340g, M.D. 320d 2.)

f. *Costs.*

In any case of amendment, the allowance of costs shall be in the discretion of the court.
(Art. 75, §§ 44, 49, W.B. 340i; G.E. 17(2012), art. 16, § 18, W.B. 374a, M.D. 320e.)

Rule 323. Motion Raising Preliminary Objections .....Gen'l.

a. *Scope—Generally.*

The following defenses may at the option of the pleader be made by motion:
(1) *lack of jurisdiction over the subject matter*
(2) *lack of jurisdiction over the person*
(3) *improper venue*
(4) *insufficiency or illegality of process*
(5) *insufficiency or illegality of service of process*
(6) *lack of legal capacity to sue on part of plaintiff*
(7) *pendency of another action between the same parties for the same cause*
(8) *want of necessary parties*

b. *When Filed.*

A motion raising one or more such defenses, except the defense of lack of jurisdiction over the subject matter, which may be raised at any time, shall be filed before any other pleading on behalf of the party making the motion is filed and the filing thereof shall extend the time for pleading pursuant to section b of Rule 308 (Time after Original Defense).

c. *Motion Ne Recipiatur or to Strike.*

A motion that any pleading be not received either because it is filed too late or is not properly verified, or for any other reason, as well as any motion to strike out any preceding motion for any reason, may be made either by a motion ne recipiatur or by a motion to strike, or both.

d. *Procedure.*

1. *Written Motion Required—Exception.*

A motion, except such as may be permitted to be introduced in open court (before trial, or during the course of trial), shall be in writing, and shall state concisely the question the court is called upon to determine.

2. *Affidavit Not Required—Exception.*

A motion need not be supported by affidavit unless it is founded on facts not apparent from the record or from papers on file in the proceeding. In such event the motion shall be supported by affidavit and shall be accompanied by the papers on which it is based.

3. *Service of Copy—Exception.*

A copy of all motions, together with copies of the affidavit and supporting papers when required shall be served upon the party affected by such motion, or his attorney of record, pursuant to Rule 306 (Service of Pleading); but this subsection shall not apply to motions introduced in open court either before trial, or during the course of trial, unless otherwise ordered.

(Proposed; Sup. Bench Rule 333.)

Rule 324. Show Cause Order—Order Nisi .....Gen'l.

a. *When to Be Issued.*

1. *Ordinarily.*

An order nisi or order to show cause on a date sooner than that ordinarily required for the filing of a responsive pleading or other defense shall not be issued as of course.

2. *For Cause.*

If the court shall be satisfied that sufficient reason exists for requiring a responsive pleading or other defense to be filed, or other action taken, prior to the date upon which it would otherwise be required, the court may, in its discretion, issue such order nisi or show cause order.

b. *Time for Response—Exception.*

Where such order shall require a response on a date sooner than that ordinarily required, such date shall not be less than ten days after the date of service, unless it is shown by affidavit, or other proof, satisfactory to the court, that irreparable damage will ensue if the order prayed for is not sooner responded to.

c. *Service of Order—Original Pleading—Subsequent Pleading.*

If such order relates to an original pleading it shall be served pursuant to the applicable provisions of Rule 104 (Service of Process on Party); but if the order relates to any subsequent pleading it may be served pursuant to Rule 306 (Service of Pleading).

d. *Answer to Order.*

1. *Separately or with Plea or Answer.*

Where an order is issued to be responded to at the same time as that upon which the ordinary responsive pleading or other defense is to be filed, the party required to respond to a show cause order or order nisi, may file a separate showing of cause, or may incorporate his showing of cause in his plea or answer.

(Proposed; Sup. Bench Rule 305.)

Rule 325. Payment into Court .....Gen'l.

a. *Application and Definitions.*

Section a of Rule 313 (Joinder of Parties and Claims—Permissive) shall apply to this Rule.

b. *When Allowed.*

A defendant may pay into court a sum of money by way of compensation or amends; and when two or more claims are joined in one action, any defendant may pay into a court a sum of money by way of compensation or amends for and on account of any or all of said claims.
(Art. 75, § 24, W.B. 348a.)

c. *Procedure.*

1. If Payment Accepted—Costs—Judgment.

The plaintiff, after payment into court, may reply to the same by accepting the sum so paid in full satisfaction and discharge of said claim, and he shall be entitled in such case to have his costs, and if the costs are not paid immediately, he shall have judgment therefor.

2. If Payment Refused—Costs—Judgment.

(a) Decision for Defendant.

The plaintiff may reply that the sum so paid is not enough to satisfy his claim; in the event of a decision for the defendant he shall be entitled to his costs, and the plaintiff shall be entitled to so much of the sum so paid as shall be found for him, less the defendant's costs.

(b) Decision for Plaintiff.

In the event of a decision for plaintiff in a sum greater than the sum paid into court, he shall be entitled to a judgment for the difference, as well as his costs, if the balance due, including costs, is not paid immediately.

3. Apportionment of Costs.

(a) When Claims Joined.

Where two or more claims are joined in one action and payment shall be made on account of one or more of said claims, the costs shall be apportioned by the court.

(b) When Claim Added by Amendment.

Where any claim on account of which the defendant shall have paid money into court pursuant to this rule shall have been added by way of amendment, the plaintiff shall be entitled only to such costs which shall accrue after said amendment.
(Art. 75, § 25, W.B. 348b.)

d. *Application to Counterclaim, Cross-Claim and Third-Party Claim.*

A party against whom a counterclaim, cross-claim or third-party claim has been filed shall have the right of payment into court in accordance with this Rule.
(Proposed.)

e. *Exceptions.*

This Rule shall not be applicable to actions for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution for criminal conversation, or debauching the plaintiff's daughter or servant.
(Art. 75, § 24, W.B. 348a.)

Rule 326. Written Instruments—Production of .....Gen'l.

Where any cause of action or defense is founded upon a written instrument, any party shall, upon written demand of the opposite party served upon him within the time allowed for pleading, file in the proceedings such instruments or a true or photostatic copy thereof, which, when filed, shall be treated as if incorporated in the pleading. The time for pleading shall be extended until fifteen days after the filing of such instrument or copy.
(Proposed.)

Rule 328. Security for Costs—Rule for .....Gen'l.

a. *When Available as of Right.*
The defendant shall be entitled, upon motion made before the case is at issue or ready for trial, to have, as of right, a rule laid on the plaintiff to give security for the payment of such costs and charges as may be recovered against him if the plaintiff is not a resident of this State at the time the motion is made.

b. *When in Discretion of Court.*
If the motion is made after the case is at issue or ready for trial, it shall be granted only in the discretion of the court, which may pass such order as justice may require as to continuances, but the court shall not permit the filing of such motion to be used to obtain undue delay of the trial.

c. *When Plaintiff Must Comply—Failure to Comply.*
If the rule is laid under section a of this Rule, the plaintiff shall have fifteen days within which to comply, but if the rule is laid under section b, the court may pass such order as to the date of compliance as justice may require; and upon failure of the plaintiff to comply, a judgment of non pros or an order of dismissal shall be entered.

d. *Stockholder Owning Less than 5 Per Cent of Stock.*

1. Corporation May Require Security.
In any action instituted in the right of any corporation by the holder or holders of less than five per centum of the outstanding shares of any class of such corporation's stock or voting trust certificates, the corporation shall be entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, excluding attorney's fees, which may be incurred by it in connection with such action, and which may be incurred by the other defendants for which it may in anywise become legally liable.

2. Increase or Decrease.
The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court, upon showing that the security provided has or may become inadequate or excessive.

3. Recourse to Security.
The corporation shall have recourse to such security in such amount as the court shall determine upon the termination of the action.

4. Exception.
This action shall not apply if the shares or voting trust certificates held by the plaintiff shall have a market value in excess of twenty-five thousand dollars.
(Art. 16, § 206, W.B. 395; art. 24, § 9; Proposed.)

Rule 329. Special Case by Consent .....Gen'l.

a. *Questions Cognizable.*
Any persons claiming to be interested in any question of law or fact or both cognizable by a court of law or equity, and within its jurisdiction, may state such question before the court by a special case by consent instead of by an ordinary pleading.
(G.E. 45(2021), art. 16, § 238, W.B. 380a, M.D. 373a; art. 75, §§ 58, 59, W.B. 334b, d, M.D. 344b.)

1. Exception.
This Rule shall not apply to divorce cases, cases involving interests in land, cases where jurisdiction may not be waived or where such cases by consent are otherwise precluded by law.
(Proposed.)

b. *How Entitled—Docketed—Effect.*

1. How Entitled—Caption.

Such case shall be entitled as a case between some one or more of the interested parties as plaintiff or plaintiffs, against some one or more of the other interested parties as defendant or defendants, and shall be designated either "Special Case by Consent — Law" or "Special Case by Consent — Equity".

2. How Docketed.

Such case shall be docketed on the law or equity docket, in the same manner as an ordinary case is docketed.

3. Effect of Docketing.

When so docketed, such case shall for all purposes be treated as a pending action instituted by an ordinary pleading, to which all parties had been summoned.
(G.E. 45(2021), art. 16, § 227, W.B. 380a, M.D. 373a; art. 75, §§ 58, 59, W.B. 344b, d, M.D. 344b.)

c. *Person under Disability.*

A person under disability may join in a special case by consent by his legal guardian, committee or trustee, with respect to any interest or right such fiduciary may have on behalf of the person under disability.
(G.E. 47(2022), art. 16, § 240, W.B. 380c, M.D. 373d.)

d. *Pleading.*

1. Contents.

Such case shall be commenced by the filing of a petition which shall state concisely, in separate paragraphs, consecutively numbered, the questions of fact or law or both to be determined by the court or by a jury.

2. Documents or Exhibits.

There shall be filed with such petition copies of such documents, or other exhibits, if any, as may be necessary to reach a decision on the question stated.
(G.E. 46(2021), art. 16, § 239, W.B. 380b, M.D. 373b.)

3. Agreements.

The parties may enter into an agreement in writing to be filed as an exhibit in any such case, that, upon the finding in the affirmative or negative by a jury, or by the court, on certain issues recited in such agreement, a sum of money fixed by the agreement, or to be ascertained by the jury or court upon a question inserted in the issues for that purpose, shall be paid by one or more of such parties to one or more of the other parties, with costs as agreed.
(Art. 75, § 56, W.B. 344a, M.D. 344a.)

4. Inferences.

Whenever any document, or other exhibit, is filed in any such case, the court, and the parties, during the course of the proceeding, may refer to the whole document, or exhibits, and the court may draw from the facts stated and documents and exhibits any inference which it might have drawn therefrom if such facts and documents or exhibits had been proven under ordinary pleadings.
(G.E. 46(2021), art. 16, § 239, W.B. 380b, M.D. 373b 2.)

e. *Plea or Answer.*

A plea or answer in any such case shall not be allowed, but all defenses which might be raised by a plea or answer in an ordinary pleading, shall be stated in the petition.
(Proposed.)

f. *Amendments and Supplemental Pleadings.*

Amendment of the pleadings shall not be made, except with the permission of the court upon terms to be prescribed by it. Supplemental pleadings shall not be allowed, except in the discretion of the court.
(Proposed.)

g. *Signatures of Parties — Appearance — Jurisdiction.*

1. Signature of Parties.

All parties to such case shall sign the petition in person or by attorney.

2. Appearance.

The appearance of every attorney shall be entered in such case in the same manner as in a case instituted by ordinary pleadings.

3. Jurisdiction.

The parties to such case shall be subject to the jurisdiction of the court in the same manner as if the plaintiff had filed a declaration, bill or petition against the party named as defendant, and such defendant had appeared thereto.
(G.E. 47(2022), art. 16, § 240, W.B. 380c, M.D. 373c.)

h. *Trial — Judgment or Decree.*

1. As in Ordinary Case.

Questions of law and fact shall be tried and determined and judgment or decree shall be rendered as in a case instituted by ordinary pleadings, subject to the right of any party to move to set aside the judgment, or for a new trial, or for a judgment *non obstante veredicto*. The court may require evidence to be taken whenever the interests of justice so require.

2. Effect.

Such judgment or decree shall be enforced as other judgments or decrees, but such judgment or decree shall not conclude or affect the rights of any other persons than those who are parties to any such case, and those claiming by, through or under such parties.
(Art. 75, § 57, W.B. 344c, M.D. 344a 2; G.E. 46(2021), art. 16, § 240, W.B. 380b, M.D. 373e; Proposed.)

i. *Costs — Appeal.*

1. Costs.

If the matter of costs have been agreed upon, they shall be assessed in accordance with such agreement, but if there be no agreement as to the costs, they shall be assessed as in any other proceeding at law or in equity.
(Art. 75, § 59, W.B. 344d, M.D. 344b 2.)

2. Appeal.

The right of appeal shall exist as in other cases of a final judgment or decree.
(G.E. 46(2021), art. 16, § 239, W.B. 380b, M.D. 373e 2.)

j. *Interpretation.*

This Rule is intended to be supplemental to, and not to supersede, Rule 713 (Declaratory Judgments).
(Proposed.)

LAW

Rule 340. Declaration ..... Law

a. *Contents — Generally.*

A declaration shall, in addition to complying with Rule 301 (Form and Contents), contain a demand for judgment for the relief to which the plaintiff deems himself entitled.
(Proposed; M.D. 330b.)

b. *Form — Generally.*

1. Use of Appendix Forms.

The forms of declarations in the Appendix to these Rules shall be deemed sufficient.
(Art. 75, § 28.)

2. Actions on Contract.

(a) One Form of Action — Assumpsit.

There shall be one form of action for recovery upon any cause or action arising *ex contractu*, namely, the action of *assumpsit*.
(Art. 75, § 4, W.B. 332a, M.D. 330c.)

(b) Common Counts — Special Counts.

In an action *ex contractu* the plaintiff may include: (a) the common counts only, or any one of them; (b) the common counts, or any one of them, and one or more special counts; or (c) one or more special counts only.
(Proposed.)

3. Numbered Counts.

Separate causes of action shall be contained in separately numbered counts.
(Proposed.)

Rule 341. Plea—Dilatory .....Law

a. *Contents — Generally.*

A dilatory plea shall, in addition to complying with Rule 301 (Form and Contents), specify the reason for the objection to the plaintiff's action, and shall also contain such statement of supporting facts as will enable the plaintiff to correct his pleading, if such correction can be made.
(Proposed; M.D. 331d.)

b. *When Filed.*

1. Within Time Limited for Pleading.

A dilatory plea must be filed within the time required by Rule 307 (Time for Original Defense).
(Proposed; Sup. Bench Rule 331; M.D. 331a 1.)

2. Before Other Pleas.

A dilatory plea shall be filed before any plea in bar is filed.
(Proposed; M.D. 331a 2, 3.)

c. *Cannot Be Amended.*

A dilatory plea may not be amended.
(Art. 75, § 47, W.B. 340j.)

d. *If Overruled — Plea to Merits — Appeal.*

If a dilatory plea is overruled, the pleader shall have the right to plead to the merits without withdrawing such plea, and upon an appeal, he shall be entitled to have the questions of law arising thereunder decided as fully as if he had not pleaded to the merits.
(Art. 75, § 13, W.B. 333d, M.D. 331e.)

Committee note.—The requirement that a dilatory plea be filed under oath has been omitted. The Committee felt that the oath was not necessary and served no real purpose.

Rule 342. Plea—In Bar .....Law

a. *Contents — Generally.*

A plea in bar, including a general issue plea, shall be in writing, unless made in open court, and shall comply with Rule 301 (Form and Contents).
(Proposed.)

b. *General Issue Plea.*

1. Contract — Form.

In an action *ex contractu* it shall be sufficient for the general issue plea to

recite "that the defendant never was indebted as alleged", or "that the defendant never promised as alleged", or both.
(Art. 75, § 4, W.B. 333b.)

2. Tort — Form.

In an action ex delicto it shall be sufficient for the general issue plea to recite "that the defendant did not commit the wrong alleged".
(Proposed.)

3. Scope.

Under a general issue plea any matter of defense shall be admissible in evidence, except in such matters as must be specifically pleaded pursuant to section c of this Rule.
(Art. 75, § 4, W.D. 333b.)

4. Plea May Amount to General Issue.

An objection to a special plea that it amounts to a general issue plea shall not be allowed.
(G.R.P.P. Pt. Three, I, Rule 1(2048), W.D. 333a, M.D. 332a.)

c. *Matters to Be Pleaded Specially.*

1. Action *ex Contractu.*

The following matters of defense must be specifically pleaded in an action *ex contractu:*

(a) Alien Enemy.

That the plaintiff is an alien enemy at the time suit is brought, or that the plaintiff was an alien enemy at the time the contract was made.[1]

(b) Tender.

That the defendant before the issuing of the summons tendered to the plaintiff a sum of money in satisfaction of the plaintiff's demand.[2]

(c) Counterclaim.

A counterclaim seeking relief exceeding in amount the relief sought by the plaintiff or arising out of an independent transaction.[3]

(d) Discharge in Bankruptcy or Insolvency.

That the defendant obtained a discharge in bankruptcy or insolvency from the plaintiff's claim.[4]

(e) Limitations.

That the plaintiff's action is barred by the statute of limitations.[5]

(f) Pleas *Puis Darrein Continuance.*

Any defense on the merits arising after suit brought.[6]

(g) Usury.

That the plaintiff's claim is affected by usury.[7]

(h) *Ultra Vires.*

That the contract made was *ultra vires.*[8]

(i) Denial of the partnership of the parties alleged in the pleadings.[9]

(j) Denial of the incorporation of a corporation alleged in the pleadings.[10]

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1. Poe—Pleading, § 610, Kerr Evans & Co. v. Improvement Co., 129 Md. 469, 474.
2. Poe, § 611.
3. Poe, §§ 612, 616, Rule 314 (Counterclaim and Cross-Claim.)
4. Poe, § 617.
5. Poe, § 618.
6. Poe, § 621.
7. Poe, §§ 621, 658; Code, art. 49, §§ 4, 5.
8. Eastern Shore Brokerage & Commission Co. v. Harrison, 141 Md. 91, 99.
9. Art. 75, § 28(108).
10. Art. 75, § 28(108).

(k) Denial of the execution of any written instrument alleged in the pleadings.[11]

(l) Arbitration and Award.

That the original cause of action had been merged by arbitration into an award.[12]

(m) Denial of Consideration.

A denial of the consideration for a contract under seal.[13]

(n) Denial of the ownership of any motor vehicle alleged in the pleadings.[14]

2. Action *ex Delicto.*

The following matters of defense must be specially pleaded in an action *ex delicto:*

(a) Limitations.

That the plaintiff's action is barred by the statute of limitations (except in an action of ejectment).[15]

(b) Pleas *Puis Darrein Continuance.*

Any defense on the merits arising after suit brought.[16]

(c) Denial of the partnership of the parties alleged in the pleadings.[17]

(d) Denial of the incorporation of the corporation alleged in the pleadings.[18]

(e) Denial of the execution of any written instrument alleged in the pleadings.[19]

(f) Denial of the ownership of any motor vehicle alleged in the pleadings.[20]

(g) Justification, Excuse, Discharge — Trespass.

All matters of justification, excuse or discharge where the action is for trespass to real or personal property or to the person.[21]

(h) Truth — Libel — Slander.

Truth by way of justification in an action for libel or slander.[22]

(i) Property in Defendant or Third Person.

That the property in the goods sought to be recovered is in the defendant or a third party.[23]

(Proposed; M.D. 332d.)

Committee note: See Rule 341 (Plea— Dilatory) and section d of this Rule for other defenses which must be pleaded specially.

d. *Special Pleas — Additional Provisions.*

1. On Equitable Grounds.

(a) When Allowed.

A party to any action at law in which he, if judgment were obtained, would be entitled to relief against such judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defense.

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11. Art. 75, § 28(108).
12. Kerr Evans & Co. v. Improvement Co., 129 Md. 469, 474.
13. Roth v. Balto. Trust Co., 161 Md. 340, 348.
14. Art. 75, § 28(109).
15. Poe, §§ 630, 632, 633, 634.
16. Poe, § 621.
17. Code, art. 75, § 28(108).
18. Code, art. 75, § 28(108).
19. Code, art. 75, § 28(108).
20. Code, art. 75, § 28(109).
21. Poe, § 632.
22. Poe, § 634.
23. Poe, §§ 628, 631.

(b) Form.

Such plea shall begin with the words "for plea on equitable grounds", or similar words.

(c) Court May Strike Out.

If it shall appear to the court that such equitable plea cannot be dealt with by a court of law so as to do justice between the parties, the court shall order the same to be stricken out on such terms as to costs as may be reasonable.
(Art. 75, §§ 91, 93, W.B. 335a, b, M.D. 347a, b.)

2. Plea of Limitations.

A plea of limitations must be filed within the time required by Rule 307 (Time for Original Defense).
(Art. 75, § 47, W.B. 340j; Sup. Bench Rule 331; M.D. 332e 3.)

Rule 343. Replication .....Law

a. *To Counterclaim, Cross-Claim or Third-Party Claim.*

Section b of Rule 342 (Plea—In Bar) shall apply, *mutatis mutandis,* when a counterclaim, cross-claim or third-party claim is filed.

b. *Replication on Equitable Grounds.*

Subsection 1 of section d of Rule 342 (Plea—In Bar) shall apply to a replication on equitable grounds, except that such replication shall begin with the words: "for replication on equitable grounds", or similar words.
(Art. 75, § 91, W.B. 335a, M.D. 347a.)

Rule 344. Rejoinder, Rebutter, Surrejoinder, Surrebutter, etc. ..Law

Rules 340 (Declaration), 341 (Plea—Dilatory), 342 (Plea—In Bar) and 343 (Replication), shall apply *mutatis mutandis* to a rejoinder, a rebutter, a surrejoinder, a surrebutter or other subsequent pleading.
(Proposed.)

Rule 345. Demurrer .....Law

a. *Scope — Generally.*

1. *Question of Law.*

Any question of law as to a pleading which may be decisive of the litigation, including the constitutionality, application or construction of a statute, and

2. *Sufficiency of Pleading.*

Any question as to the sufficiency of substance of any pleading, may be raised by demurrer.
(Proposed.)

b. *Contents — Generally.*

A demurrer shall, in addition to complying with Rule 301 (Form and Contents) in so far as the requirements thereof are applicable, state in detail the question of law or insufficiency of substance upon which the demurrer is founded.
(Proposed.)

c. *No Demurrer for Informality — Proviso.*

A demurrer shall not be allowed for a mere informal statement of a cause of action or defense, provided such statement is sufficient in substance.
(Art. 75, § 8, W.B. 334b, M.D. 335b.)

d. *If Overruled — Plea to Merits — Appeal.*

If a demurrer is overruled, the party demurring shall have the right to plead to the merits without withdrawing such demurrer, and upon an appeal he shall

be entitled to have the questions of law arising thereunder decided as fully as if he had not pleaded to the merits.
(Art. 75, § 10, W.B. 334c, M.D. 335d.)

Rule 346. Bill of Particulars .....Law

a. *Right to Require.*

A party may demand, in writing, a bill of particulars whenever the pleading to which he must reply is so general as not to give sufficient notice to him of the evidence to be offered in support of such pleading.
(Art. 75, § 28(107).)

b. *Compliance with Demand.*

Where a demand for a bill of particulars is allowed, the particulars shall be furnished within the time required by section a of Rule 308 (Time after Original Defense).
(Proposed.)

c. *Exception to Demand.*

A party who believes that the particulars demanded by the opposite party are unnecessary or improper may except to the demand thereof, stating concisely the reason therefor.
(Proposed; M.D. 336b.)

d. *Motion for More Comprehensive Particulars.*

If the particulars furnished are deemed to be insufficient, the party requiring such particulars may make a motion to compel more comprehensive particulars, stating concisely the reasons therefor.
(Proposed; M.D. 336c.)

e. *Binding on Pleader.*

Particulars, whether supplied with a pleading, or pursuant to a demand, shall be deemed to be a part of the pleading to which they refer and binding on the party furnishing them to the same extent as such pleading.
(Proposed.)

EQUITY

Rule 370. Bill of Complaint—Petition .....Equity

a. *Contents — What Required.*

A bill of complaint or petition shall, in addition to complying with Rule 301 (Form and Contents), comply with the following requirements:

1. Paragraphing.

A bill or petition shall be divided into paragraphs, separately numbered, and, in so far as possible, each paragraph shall contain a separate and distinct averment.

2. Statement of Facts — Anticipation of Defense.

A bill or petition shall contain a concise statement of the facts upon which the plaintiff seeks relief, and such averments as may be necessary to entitle him to the relief sought, and, may also contain such facts as are intended to avoid an anticipated defense.

3. Prayer for Relief.

A bill or petition shall also contain prayers specifying particularly the relief sought, which shall be separately numbered, and may also contain a general prayer for such other and further relief as the case may require.

4. Prayer for Special Writ or Order.

If an injunction, or other special writ, or any special order, be required, such relief shall be specially prayed.

(G.E. 7(2008), art. 16, § 187, W.B. 362b, M.D. 360b, d.)

b. *Contents — What Not Required.*

1. Combination Clause—Want of Legal Remedy—Formal Averments.

A formal combination clause, or allegation of want of remedy at law, or other similar formal averment, shall not be required.

(G.E. 7(2008), art. 16, § 187, W.B. 362b 2, M.D. 360e 3.)

2. Prayer for Process.

A prayer for process or order of publication shall not be necessary, except as otherwise specifically provided by these Rules or by statute, but such prayer may be used, if desired, for the purpose of giving the names and addresses of the parties defendant as required by section e of Rule 301 (Form and Contents).

(Proposed; M.D. 360e 1.)

3. Prayer for Process for Special Writ or Order.

If an injunction or other special writ, or any special order, be sought in the prayer for relief, it shall not be necessary to repeat the same in a prayer for process.

(G.E. 8(2009), art. 16, § 188, W.B. 362c, M.D. 360e 5.)

4. Prayer for Answer—Exception.

A prayer that the defendant be required to answer shall not be necessary, unless the plaintiff shall pray that the defendant be required to verify his answer to the bill or petition.

(G.E. 7(2008), art. 16, § 187, W.B. 362b 3, M.D. 360e 4.)

Rule 371. Defenses—Generally .....Equity

a. *Answer.*

Any defense to a bill of complaint or petition based upon matter which does not appear upon the face of said bill of complaint or petition shall be made by answer.

(Proposed.)

b. *Demurrer.*

Any defense to any bill or petition, which appears on the face thereof, shall be made either by demurrer or by answer.

(G.E. 18(2013), art. 16, § 190, W.B. 363a.)

c. *Demurrer and Answer — Whole or Part.*

The defendant may demur to or answer, or may in the same pleading demur to and answer, the whole bill or any part thereof.

(Art. 16, § 189, W.B. 363b.)

Rule 372. Answer .....Equity

a. *Contents — What Required.*

An answer shall, in addition to complying with Rule 301 (Form and Contents), shall comply with the following requirements:

1. Paragraphing.

An answer shall be divided into paragraphs, which shall be separately numbered, and, in so far as possible, each paragraph shall contain a separate and distinct averment.

(G.E. 20(2013), art. 16, § 196, W.B. 363c 1, M.D. 362b 1.)

2. Admit, Deny or Explain.

An answer shall state concisely the defense to each claim asserted in the bill

or petition, but shall specifically admit, deny or explain the facts alleged by the plaintiff, unless the defendant is without knowledge, in which event he shall so state, and such statement shall operate as a denial. All material allegations in the bill or petition shall be answered.
(G.E. 20(2013), art. 16, § 196, W.B. 363c, M.D. 362c 1.)

b. *Averments Not Denied—Admitted.*
In addition to the matters deemed to be admitted, if not denied, pursuant to Rule 310 (Admissions by Failure to Deny), all averments, other than the amount of any damage averred, if not denied in the answer, shall be deemed to be admitted, except as against persons under disability who are not represented by a legal guardian, committee or trustee.
(Art. 16, § 196, W.B. 363c, M.D. 362c 4.)

1. *Exception.*
If a defendant is unable to deny an averment, and an admission thereof would incriminate him, or subject him to a penalty, he may state that he is unable to admit, deny or explain said averment upon advice of counsel, and such statement shall not amount to an admission of such averment, nor prejudice the defendant.
(Proposed.)

Committee note. — Equity Rule 20 requires a defendant specifically to admit, deny or explain the facts on which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, and such statement shall operate as a denial. This Rule has given trouble in divorce cases, see Myerberg "Practical Aspects of Divorce Practice", pp. 73-75. The proposed exception is intended to remedy this situation.

c. *Defenses Available by Answer.*
1. Defense on Demurrer Available by Answer.
The defendant may assert, in answer to the merits of the bill or petition, all matters of defense in law or equity of which he may be entitled to avail himself by demurrer.
(G.E. 20(2013), art. 16, § 196, W.B. 363c.)

2. Defense in Bar or Abatement.
Any defense in bar or abatement may be made in the answer, but this section shall not be construed to prevent a defendant from filing a motion to set aside service, pursuant to Rule 304 (Service — Motion to Set Aside).
(G.E. 18(2013), art. 16, § 190, W.B. 363g, M.D. 362a.)

3. Separate Hearing.
In the discretion of the court, any defense may be separately heard and disposed of before the trial of the case on its merits, pursuant to Rule 501 (Separate Issue or Claim).
(G.E. 18(2013), art. 16, § 190, W.B. 363g, M.D. 362a.)

d. *Interpleader.*
Where, in a bill of interpleader, a defendant is a nonresident, and such nonresident shall fail to answer, the court may, if it be feasible, order the answers filed by the other defendants to be taken as the answer of such nonresident defendant, or may as to such defendant direct testimony to be taken; provided, notice be given by publication pursuant to Rule 105 (Process by Publication).
(Art. 16, § 154.)

e. *Affidavit — When Required.*
An answer need not be verified unless required by the plaintiff pursuant to the provisions of section b 4 of Rule 370 (Bill of Complaint — Petition).
(Art. 16, § 200, W.B. 363h, M.D. 362b 2.)

Rule 373. Demurrer—To Bill or Answer .....Equity

a. *Scope — Generally.*
Section a of Rule 345 (Demurrer) shall apply to this Rule.
(Proposed.)

b. *Contents — Generally.*
Sections b and c of Rule 345 (Demurrer) shall apply to this Rule.
(Proposed.)

c. *If Overruled — Answer to Merits — Appeal.*
If a demurrer is overruled, and the person demurring shall not have answered previously, he shall have the right to answer without withdrawing such demurrer, and upon an appeal he shall be entitled to have the questions of law arising under the demurrer fully decided.
(Art. 75, § 10, W.B. 334c, M.D. 335d.)

Rule 375. Replication .....Equity

a. *Not Required — Exception.*
A replication to an answer shall not be necessary, unless required by a special order of the court, and the case shall be deemed to be at issue upon the filing of the answer.
(G.E. 21(2014), W.B. 370a.)

b. *New Matter in Answer.*
New or affirmative matter alleged in the answer shall be deemed to be denied by the plaintiff.
(G.E. 21(2014), W.B. 370a.)

Rule 379. Supplemental Pleading .....Equity

Upon the application of any party, the court, upon such notice and terms as it may prescribe, may permit such party to file a supplemental pleading, alleging material facts which occurred after the previous pleading was filed, including the rendition of a subsequent judgment or decree of another competent court concerning the matter in controversy, facts of which the pleader was ignorant when his pleading was filed, or other facts which may make it necessary or advisable to file such supplemental pleading.
(G.E. 24(2014), W.B. 372.)

Chapter 400.

Depositions and Discovery.

RULES 400-499

General

GENERAL

Rule 400. Application ..... Gen'l.

a. *All Actions.*

Rules 400-425 shall apply to all actions and provide the exclusive method for taking depositions, subject to Rule 760 (Supplementary Proceedings) and Rule 580 (Examiners).

b. *Commissions to Take Testimony Abolished.*

A commission to take testimony within this State shall not issue in an action pending in the courts of this State.
(Proposed.)

Rule 401. Deposition Pending Action ..... Gen'l.

a. *When May Be Taken.*

At any time after jurisdiction has been obtained over any defendant or over property which is the subject of the action, any party to any action may, without leave of court, cause the testimony of any person, whether a party or not, to be taken by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes.

b. *Person in Prison.*

The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

c. *Rules Governing.*
The taking and use of such depositions shall be governed by Rules 403 to 415, inclusive.
(G.R.P.P. Pt. Two, I, Rule 1(2029).)

Rule 402. Deposition before Action .....Gen'l.

a. *Right to Take.*
A person who desires to perpetuate his own testimony or that of any other person regarding any matter in proving which he may apprehend himself to be interested may have his own or such person's deposition taken in this State in accordance with these Rules. The notice required by Rule 405 (Notice for Deposition) shall be given to each person against whom such deposition is expected to be used. In applying the Rules to such depositions the persons notified shall be deemed "parties" and references to the "court in which the action is pending" shall be deemed to refer to any court of law or equity in this State within whose jurisdiction the depositions are to be taken.
(G.R.P.P. Pt. Two, I, Rule 2a(2029).)

b. *Person under Disability.*
Where any person against whom such deposition is to be used is a person under disability, notice may be given to his attorney or guardian or committee, or if he has none, any court within whose jurisdiction the deposition is to be taken may appoint a guardian or attorney for that purpose upon motion by the person taking the deposition.
(G.R.P.P. Pt. Two, I, Rule 2b(2030).)

c. *Nonresident.*
When any person against whom such deposition is intended to be used is absent from the State and has no agent, attorney or guardian within the State, any court within whose jurisdiction the deposition is to be taken may, upon motion by the person taking the deposition, authorize notice to such person by publication, registered mail or otherwise and may appoint an attorney to represent him at the examination.
(G.R.P.P. Pt. Two, I, Rule 2c(2030).)

Rule 403. Before Whom Taken .....Gen'l.

a. *Within This State.*
Within this State, depositions shall be taken before any standing commissioner or equity examiner or before any notary public of this State.
(G.R.P.P. Pt. Two, I, Rule 3a(2030).)

b. *In Other State.*
Within any other state of the United States or within a territory, district, or possession of the United States, depositions shall be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed shall have power to administer oaths and take testimony.
(G.R.P.P. Pt. Two, I, Rule 3b(2030).)

c. *In Foreign Country.*
In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory, or otherwise by the court in which the action is pending. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms

and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."
(G.R.P.P. Pt. Two, I, Rule 3c(2030).)

d. *Disqualification for Interest.*
A deposition shall not be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding, unless the parties agree thereto.
(G.R.P.P. Pt. Two, I, Rule 3d(2030).)

Rule 404. Stipulation as to Taking of Deposition .....Gen'l.

If the parties so stipulate in writing, a deposition may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.
(G.R.P.P. Pt. Two, I, Rule 4(2030).)

Rule 405. Notice for Deposition .....Gen'l.

a. *Upon Oral Examination.*

1. 5 Days.
A party desiring to take the deposition of any person upon oral examination shall give at least five days' notice in writing to every other party to the proceedings.

2. Content.
The notice shall state the time and place for taking the deposition, the name or descriptive title of the officer before whom the deposition is to be taken, and the name and address of each person to be examined, or, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

3. Court May Shorten or Extend Time.
On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.
(G.R.P.P. Pt. Two, I, Rule 5a(2031).)

b. *Upon Written Interrogatories.*

1. Interrogatories Served with Notice.
A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken.

2. Further Procedure.
Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3 days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.
(G.R.P.P. Pt. Two, I, Rule 5b(2031).)

c. *Regulation by Court.*
The court may regulate at its discretion the time and order of taking depositions as shall best serve the convenience of the parties and witnesses and the interests of justice.
(Proposed.)

d. *Where Residence or Whereabouts Unknown.*
Where the residence or whereabouts of a party entitled to notice are unknown, and he has no attorney of record, the court may, by order, permit the taking of a deposition, without notice to such party, if justice so requires.
(Proposed.)

Rule 406. Order to Protect Party and Deponent .....Gen'l.

a. *Power to Make — Scope.*

After notice is served for taking a deposition by oral examination, or upon written interrogatories, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the proceeding is pending may make an order

(1) that the deposition shall not be taken, or
(2) that it may be taken only at some designated *time or* place other than that stated in the notice, or before some other designated officer, or
(3) that it may be taken only on written interrogatories, or only by oral examination, as the case may be, or
(4) that certain matters shall not be inquired into, or
(5) that the scope of the examination shall be limited to certain matters, or
(6) that the examination shall be held with no one present except the parties to the proceeding and their officers or counsel, or
(7) that after being taken, the deposition shall not be opened or the contents made public, except by order of the court, or
(8) that secret processes, developments or research need not be disclosed, or
(9) that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from hardship or oppression, or *undue expense.*
(G.R.P.P. Pt. Two, I, Rule 6a(2031).)

b. *Limitation.*

The policy of these Rules is to require full disclosure as specified in Rule 410 (Scope of Examination) and the powers conferred by section a of this Rule shall be used only to prevent genuine oppression or abuse.
(G.R.P.P. Pt. Two, I, Rule 6b(2031).)

c. *Expenses.*

1. Motion Denied.

If a motion under this Rule is denied and if the court finds that the motion was made without substantial justification, the court shall require the moving party or witness or the attorney advising the motion or both of them to pay to the party taking the deposition the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

2. Motion Granted.

If, upon a motion under this Rule, the court orders that the deposition shall not be taken and if it finds that the purpose in taking the deposition was to harass or oppress the witness or party, the court shall require the party attempting to take the deposition or the attorney advising such taking or both of them to pay to the moving party or witness the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.
(G.R.P.P. Pt. Two, I, Rule 6c(2031).)

Rule 407. Summons .....Gen'l.

a. *How Issued.*

Upon proof of service of a notice to take a deposition as provided in Rule 405

(Notice for Deposition), the clerk of a court of this State having jurisdiction over the place where the deposition is to be taken shall issue a summons for the person named or described in the notice.
(G.R.P.P. Pt. Two, I, Rule 7a(2032).)

b. *For Documentary Evidence.*
The summons may command the person to whom it is directed to produce designated books, papers, documents or other tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 410 (Scope of Examination) but in such event the summons will be subject to the provisions of Rule 406 (Order to Protect Party and Deponent) and subdivision b of Rule 115 (Summons Duces Tecum).
(Proposed.)

Rule 408. Place of Examination .....Gen'l.

a. *In Maryland.*

1. Resident.

A resident of this State may be required to attend an examination for deposition only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by order of court.

2. Nonresident.

A nonresident may be required to attend in this State only in the county wherein he is served with a summons or within forty (40) miles from the place of service or at such other convenient place as is fixed by an order of court.
(G.R.P.P. Pt. Two, I, Rule 7b(2032).)

b. *Out of State.*
Where the examination is held outside of this State, witnesses shall be compelled to attend and testify in accordance with the law of the place where the examination is held.
(G.R.P.P. Pt. Two. I, Rule 7c(2032).)

Rule 409. Examination .....Gen'l.

a. *Oral Examination.*
When the deposition is taken upon oral examination, examination and cross-examination of a deponent may proceed as permitted in the trial of an action in open court. The cross-examination need not be limited to the subject matter of the examination in chief, but shall be subject to the provisions of section b of Rule 413 (Use of Depositions). In lieu of participating in the oral examinations, parties served with notice of taking a deposition may transmit written interrogatories to the officer designated, who shall propound them to the witness and record the answers verbatim.
(G.R.P.P. Pt. Two, I, Rule 8a(2032).)

b. *Written Interrogatories.*
When the deposition is to be taken upon written interrogatories, a copy of the notice and copies of all direct, cross, redirect and recross interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice. Such officer shall proceed promptly, in the manner provided by these Rules to take the testimony of the witness in response to the interrogatories and to prepare certify and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.
(G.R.P.P. Pt. Two, I, Rule 8b(2032).)

c. *Record of Examination.*

1. Oath—Transcribing.

The officer before whom the deposition is to be taken shall put the witness on

oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed unless (1) the parties agree otherwise, or (2) the court in which the proceeding is pending, upon motion and for good cause shown, orders otherwise to save expense, or to prevent hardship or injustice. *The court may order the transcription paid by one or some of, or apportioned among, the parties.*

2. Objections.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.
(G.R.P.P. Pt. Two. I. Rule 8c(2032).)

d. *Refusal to Answer.*

1. Motion to Compel Answer.

If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to any court within whose jurisdiction the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any written interrogatory the proponent of the question may on like notice make like application for such an order.

2. Motion Granted.

If the motion is granted and if the court finds that the refusal was without substantial justification, the court shall require the refusing party or other deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

3. Motion Refused.

If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.
(G.R.P.P. Pt. Two, I, Rule 8d(2033).)

Rule 410. Scope of Examination .....Gen'l.

a. *Generally.*

Unless otherwise ordered by the court, a deponent may be examined, either orally or upon written interrogatories, regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,

(1) whether it relates to the claim or defense of the party examining or submitting interrogatories or to the claim or defense of any other party, and

(2) including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and

(3) including any information of the witness or party, however obtained, as to the identity and location of persons having knowledge of relevant facts and

(4) whether or not any of such matters is already known to or otherwise obtainable by the party examining or submitting interrogatories.
(G.R.P.P. Pt. Two. II. Rule 3(2037). W.B. 418.)

b. *No Objection Based on Inadmissibility at Trial.*

It is not ground for objection that the testimony will be inadmissible at the trial

if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.
(Proposed.)

c. *Exceptions—Writings—Expert Conclusions.*

1. *Writings Obtained in Preparation for Trial.*

The deponent shall not be required to produce or submit for inspection any writing or copy thereof obtained or prepared in anticipation of litigation or in preparation for trial unless the court otherwise orders on the ground that a denial of production or inspection will result in an injustice or undue hardship.

2. *Writings Reflecting Attorney's Conclusions.*

Nor shall a deponent be required to produce or submit for inspection any part of a writing which reflects an attorney's mental impressions, conclusions, opinions or legal theories.

3. *Conclusions of an Expert.*

Nor, except as provided in Rule 420 (Mental and Physical Examinations), shall a deponent be required to disclose the conclusions of an expert.
(Proposed.)

Committee note. — The purpose of section c of this Rule is to prevent a party from taking advantage of investigations made, statements taken or reports or other papers prepared by the adverse party, or by any witness, in anticipation of litigation. The protection is intended to extend to the party or witness, or to the attorney, surety, insurer, indemnitor or agent of such party or witness.

Rule 411. Correction, Signature, Certification and Filing of Deposition ..... Gen'l.

a. *Correction and Signature.*

1. Submission to Witness.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties.

2. Correction—Change.

Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reason given by the witness for making them.

3. Signature by Witness.

The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign.

4. Signature by Officer.

If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under section d of Rule 412 (Error and Irregularity in Deposition) the court holds that the reason given for the refusal to sign require rejection of the deposition in whole or in part.
(G.R.P.P. Pt. Two, I, Rule 9a(2033), W.B. 410a.)

b. *Certification, Filing and Copies.*

1. Certification

The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness.

2. Filing.

He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)" and,

unless the parties otherwise agree, shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing, and shall notify the party taking the deposition that he has done so.

3. Copy to Be Furnished.

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

4. Notice of Filing.

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

(G.R.P.P. Pt. Two, I, Rule 9b(2033), W.B. 410b.)

Rule 412. Error and Irregularity in Deposition .....Gen'l.

a. *As to Notice.*

All errors and irregularities in the notice for taking a deposition are waived unless written objection is served promptly on the party giving notice.

(G.R.P.P. Pt. Two. I, Rule 10a(2034), W.B. 411a.)

b. *As to Disqualification of Officer.*

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

(G.R.P.P. Pt. Two, I, Rule 10b(2034), W.B. 411b.)

c. *As to Taking of Deposition.*

1. Objections to Competency of Witness or to Evidence.

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

2. Waiver unless Seasonable Objection.

An error or irregularity occurring at the oral examination in the manner of taking the deposition in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and an error of any kind which might be obviated, removed, or cured if promptly presented, is waived unless seasonable objection thereto is made at the taking of the deposition.

3. To Written Interrogatories.

An objection to the form of written interrogatories submitted under section b of Rule 405 (Notice for Deposition) is waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories, or, if the objection is to recross interrogatories, then within 3 days after service of the same.

(G.R.P.P. Pt. Two. I, Rule 10c(2034), W.B. 411c.)

d. *As to Completion and Return of Deposition.*

An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(G.R.P.P. Pt. Two, I, Rule 10d(2034), W.B. 411d.)

Rule 413. Use of Deposition .....Gen'l.

a. *When May Be Used.*

At the trial or upon the hearing of a motion or an interlocutory proceeding, any

part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any one of the following provisions:

1. Contradiction and Impeachment.

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

2. By Adverse Party.

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

3. Witness Not Available—Exceptional Circumstances.

The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had due notice thereof, if the court finds:

(1) that the witness is dead; or

(2) 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

(3) that the witness is unable to attend or testify because of age, mental incapacity, sickness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by summons; or

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

4. Use of Part of Deposition.

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

5. Deposition Taken in Previous Proceedings—Substitution of Party.

Substitution of a party does not affect the right to use depositions previously taken; and, when a proceeding in any court of this State or of any other state or of the United States has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.
(G.R.P.P. Pt. Two, I, Rule 11a(2034), W.B. 412a.)

b. *Objection to Admissibility.*

Subject to the provisions of Rule 412 (Error and Irregularity in Deposition), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
(G.R.P.P. Pt. Two, I Rule 11b(2035), W.B. 412b.)

c. *Effect of Deposition.*

A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than as permitted by paragraphs 1 and 2 of section a of this Rule makes the deponent the witness of the party introducing the deposition. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.
(G.R.P.P. Pt. Two, I, Rule 11c(2035), W.B. 412c.)

Rule 414. Penalty .....Gen'l.

a. *Against Deponent.*

1. Contempt.

If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by any court of law or equity within whose jurisdiction the deposition is being taken, the refusal may be considered a contempt of that court, and punished accordingly.
(G.R.P.P. Pt. Two, I, Rule 12a(2035), W.B. 413a.)

2. Other Orders.

If any party or any officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition after being served with the proper notice or refuses to answer any designated questions after an order of court to do so, the court in which the action is pending may make any of the orders authorized by Rule 422 (Failure to Comply with Orders for Discovery).
(G.R.P.P. Pt. Two, I, Rule 12b(2036), W.B. 413b.)

b. *Against Party Giving Notice of Taking.*

1. Failure to Attend.

If the party giving the notice of the taking of a deposition on oral examination fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.
(G.R.P.P. Pt. Two, I, Rule 12c(2036), W.B. 413c.)

2. Failure to Summon Witness.

If the party giving the notice of the taking of a deposition of a witness fails to serve a summons upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.
(G.R.P.P. Pt. Two, I, Rule 12d(2036), W.B. 413d.)

Rule 415. Cost of Deposition .....Gen'l.

a. *Used in Evidence.*

The cost of depositions admitted in evidence shall be taxed as part of the costs of the case, unless the court on motion shall disallow the same or otherwise apportion the costs between the parties.

b. *Not Used in Evidence.*

It shall be discretionary with the court to tax as part of the costs of the case all or any part of the cost of any other deposition taken by any party to the action.
(Proposed; Sup. Bench Rule 401.)

Rule 416. Discovery by Deposition .....Gen'l.

A deposition may be taken for discovery pending action in accordance with Rules 401 (Deposition Pending Action) and 403 (Before Whom Taken) to 415 (Cost of Deposition).
(G.R.P.P. Pt. Two, II, Rule 1(2036).)

Rule 417. Discovery by Interrogatories to Party .....Gen'l.

a. *Service.*

1. Time.

Any party to an action may at any time serve upon any adverse party written in-

terrogatories to be answered by the party served, or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party served.

2. Number of Interrogatories.

A party may not, without leave of court, serve upon the same party more than one set of interrogatories or more than thirty interrogatories (including interrogatories subsidiary or incidental to, or dependent upon other interrogatories, however grouped, combined or arranged) to be answered by him, except as provided in subparagraph 3 of section a of this Rule.
(G.R.P.P. Pt. Two, II, Rule 2a(2037).)

3. Supplementary Interrogatories—Additional Information.

A party who has previously filed one set of interrogatories, to which answers have been filed by the opposing party, may, without leave of court, at any time before trial, serve upon the opposing party supplementary interrogatories, requiring the opposing party to disclose any other or further information in his possession at the time of the service of the supplementary interrogatories which would add to, modify or correct the answers previously filed. A party upon whom such supplementary interrogatories have been served shall, if he has or has acquired any such additional information, answer said supplementary interrogatories according to these Rules, or deny the possession of such information, if such be the case. The court may make such orders with respect to postponements occasioned by the filing of such supplementary interrogatories, as justice may require.
(Proposed.)

b. *Answer.*

1. Within 15 Days.

Within fifteen days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time, the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories.

2. Writing—Oath—Signature.

Each interrogatory shall be answered separately and fully in writing under oath or the grounds for refusal to answer shall be fully stated under oath. The answers shall be signed by the person making them.
(G.R.P.P. Pt. Two. II, Rule 2b(2037).)

c. *Exception.*

1. Within 10 Days.

Within ten days after the delivery of the answers, the party submitting the interrogatories may file an exception to the sufficiency of any answer or to any refusal to answer, which shall be heard as soon as practicable.

2. Sustained—Expenses.

If an exception is sustained, the court shall order an answer or further answer within such time as it may prescribe and, if the court finds that the refusal or insufficient answer was without substantial justification, the court shall require the party or his attorney or both of them to pay to the party submitting the interrogatories the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

3. Denied—Expenses.

If the exception is denied and if the court finds that it was made without substantial justification, the court shall require the party submitting the interrogatories or his attorney or both of them to pay to the other party the amount of the reasonable expenses incurred in opposing the exceptions, including reasonable attorney's fees.
(G.R.P.P. Pt. Two, II, Rule 2c(2037).)

d. *Default.*
If, after proper service of interrogatories upon a party, he fails to serve answers to them within the time allowed, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default or decree *pro confesso* against that party.
(G.R.P.P. Pt. Two, II, Rule 2d(2037).)

e. *Scope—Exception.*
Interrogatories may relate to any matters which can be inquired into under Rule 410 (Scope of Examination), except that the actual production of any documents or tangible things shall be procured pursuant to Rule 419 (Discovery of Documents and Property).
(Proposed.)

f. *Use of Answer.*
At the trial or at any interlocutory proceeding, the answers may be used to the same extent as provided in Rule 413 (Use of Deposition) for the use of a deposition of a party.
(G.R.P.P. Pt. Two. II, Rule 2e(2037).)

g. *Use in Conjunction with Deposition.*
Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require.
(Proposed.)

h. *Protective Order.*
The provisions of Rule 406 (Order to Protect Party and Deponent) are applicable for the protection of the party from whom answers to interrogatories are sought under this Rule.
(Proposed.)

Rule 419. Discovery of Documents and Property .....Gen'l.

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 406 (Order to Protect Party and Deponent), the court may, at any time in any proceeding:
(G.R.P.P. Pt. Two, II, Rule 4(2038).)

a. *Production, Inspection and Copying.*
Order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or other tangible things, not privileged, which may constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 410 (Scope of Examination) and which are in his custody, possession or control; or
(G.R.P.P. Pt. Two. II, Rule 4(1) (2038).)

b. *Entry on Land.*
Order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or designated object or operation thereon, within the scope of the examination permitted by Rule 410 (Scope of Examination); or
(G.R.P.P. Pt. Two, II, Rule 4(2) (2038).)

c. *Samples, Observations and Experiments.*
Order any samples to be taken, or any observations to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining

full information or evidence as to any matter involved in the action, and within the scope of the examination permitted by Rule 410 (Scope of Examination).
(G.R.P.P. Pt. Two, II, Rule 4(3) (2038).)

d. *Form of Order.*
The order shall specify the time, place, and manner of making the inspection, observations or experiments and of taking the copies and photographs or samples and may prescribe such terms and conditions as are just.
(G.R.P.P. Pt. Two, II, Rule 4(2038).)

Rule 420. Mental and Physical Examination .....Gen'l.

Whenever the mental or physical condition *or the blood relationship* of a party *or of an agent or a person in the custody or under the legal control of a party,* is material to any matter involved in any action, the court may, upon motion by any party and notice to all other parties, for good cause shown, order such party to submit to a mental or physical *or blood* examination by a physician or physicians *or to produce for such examination his agent or the person in his custody or legal control.* The order (1) shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made and (2) may regulate the filing of a report of findings and conclusions and the testimony at the trial by the examining physician or physicians, the payment of the expenses of the examination and any other relevant matters.
(G.R.P.P. Pt. Two, II, Rule 5(2038).)

Rule 421. Admission of Facts and of Genuineness of Documents ..Gen'l.

a. *Request.*
A party to any action may at any time serve upon any other party a written request to admit (1) the genuineness of any relevant documents described in and exhibited with the request or (2) the truth of any relevant matters of fact set forth in the request. Copies of the documents shall be served with the request unless copies have already been furnished.
(G.R.P.P. Pt. Two, II, Rule 6a(2038).)

b. *Admission.*
Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters, or any part thereof. *If a request is refused because of lack of information or knowledge upon the part of the party to whom the request is directed, he shall also show in his sworn statement that the means of securing the information or knowledge are not reasonably within his power.*
(G.R.P.P. Pt. Two, II, Rule 6b(2039).)

c. *Effect of Admission.*
Any actual or implied admission made by a party pursuant to such request is for the purpose of the pending action only and it neither constitutes an admission by him for any other purpose nor may it be used against him in any other action.
(G.R.P.P. Pt. Two, II, Rule 6c(2039).)

d. *Objection — Expenses.*
1. Objection.
An objection to a request to admit or to a refusal to admit shall be heard only on an application to assess expenses, pursuant to subsection 2 of this section d.

2. Expenses.

If a party, after being served with a request to admit any matters, serves a sworn statement refusing such admission and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, the court, upon application, may order the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees, unless the court finds that there were good reasons for the refusal or that the admissions sought were of no substantial importance.
(G.R.P.P. Pt. Two, II, Rule 6d(2039).)

e. *Withdrawal.*

The court may, to prevent injustice, allow the party making any such admission to withdraw it or relieve a party from any implied admission, upon such terms as may be just.
(G.R.P.P. Pt. Two, II, Rule 6e(2039).)

Rule 422. Failure to Comply with Orders for Discovery .....Gen'l.

If any party or an officer or managing agent of a party refuses to obey an order requiring him to answer designated questions, or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, or to permit entry upon land or other property, or to submit to a physical or mental *or blood* examination, the court may make such orders in regard to the refusal as are just, and among others the following:
(G.R.P.P. Pt. Two, II, Rule 7(2039).)

a. *Matter to Be Taken as Established.*

An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental *or blood* condition *sought to be examined,* or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
(G.R.P.P. Pt. Two, II, Rule 7(1) (2039).)

b. *Prohibiting Claims, Defenses or Evidence.*

An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of *the* physical or mental *or blood* condition *sought to be examined;*
(G.R.P.P. Pt. Two, II, Rule 7(2) (2039).)

c. *Striking Out Pleadings — Stay — Dismissal — Judgment by Default.*

An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default or decree pro confesso against the disobedient party;
(G.R.P.P. Pt. Two, II, Rule 7(3) (2040).)

d. *Contempt.*

In lieu of any of the foregoing orders or in addition thereto, an order punishing any party or officer or agent of a party for contempt, for disobeying any of such orders except an order to submit to a physical or mental examination.
(G.R.P.P. Pt. Two, II, Rule 7(4) (2040).)

Rule 425. Commissions from Foreign Courts .....Gen'l.

a. *Party in Any Foreign Court May Obtain.*

A party to any civil action, suit or special proceeding, pending in a court without this State, either in any state, district or territory of the United States or

in a foreign country, may obtain in the following manner, the testimony of a witness or witnesses, and in connection therewith, the production of books and papers within this State, to be used in such action, suit or special proceeding. (Art. 35, § 41.)

b. *Designation of Commissioner by Foreign Court — Notice.*

Where any commission, or process in the nature of a commission, to take the testimony of a witness or witnesses named therein within this State shall be issued by any court without the State, either in any state, district or territory of the United States, or in a foreign country, directed to any person, designated by name, title or office or otherwise, in this State, the person so designated as commissioner shall serve notice on the witness or witnesses to be examined under said commission, of the time and place appointed for the execution of said commission at least five days before the day so appointed. (Art. 35, § 41.)

c. *Production of Papers, etc.*

Where the court, wherein such action, suit or special proceeding is pending, is satisfied by the affidavit of either party thereto or otherwise, and it be stated in such commission or process in the nature of a commission, that any witness to be examined under such commission or process, has in his possession or control any paper, writing, written instrument, book or other document, which, if produced, would be competent and material evidence for the parties to such suit or action, or either of them, and said paper, writing, written instrument, book or other document be sufficiently described for identification in said commission or process in the nature of a commission, the said commissioner therein appointed shall serve notice as aforesaid of the time and place appointed for the execution of said commission, and therein require said witness to bring with him and produce to said commissioner any such paper, writing, written instrument, book or other document, supposed to be in his possession or control, the same to be described or identified in said notice as in said commission. (Art. 35, § 41.)

d. *Failure to Attend and Testify — Compulsion.*

1. Certification by Commissioner.

If any witness, who shall have been duly notified so to do, as hereinbefore prescribed, shall fail to attend at the execution of said commission, or refuse to testify or to answer such questions as may be propounded to him under such commission, or shall fail to produce, pursuant to said notice, any book, paper, or instrument of writing in his possession or control, or shall refuse to subscribe his deposition, it shall be the duty of the commissioner named in said commission, at the request of the court issuing the same, to certify such failure to attend or refusal to testify or subscribe, or to produce books, papers or written instruments, to the court where said commission is to be executed.

2. Order of Court.

The court on receiving the said certificate, shall forthwith issue his order commanding the said delinquent witness on some day and at some place therein appointed to appear before him and show cause why he, the said witness, has so failed to attend or refused to testify or subscribe, or refused to produce books or papers in his possession or control, a copy of which order shall be served upon the delinquent witness at least five days before the day therein appointed.

3. Compulsion.

And if the said witness, after having had such notice of said order, shall neglect or refuse to appear before the court, or appearing, shall fail to show good and sufficient cause why he has so failed to attend or refused to testify or subscribe his deposition, or refuse to produce said books or papers before said commissioner, then the court may compel the appearance and answer of such witness as provided in section e of this Rule.

4. Extension of Time.

Provided, that the court may extend the time for hearing before him if deemed by him necessary or important.
(Art. 35, § 41.)

e. *Compelling Testimony — Attachment.*

Where any mandate, writ or commission is issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this State, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this State.
(Art. 35, § 42.)

f. *Witnesses — Pay for Attendance.*

All witnesses summoned under such commissions shall be allowed the same pay for their attendance as is allowed for the attendance of witnesses before justices of the peace, to be paid by the party summoning them.
(Art. 35, § 45, W.B. 425g.)

Committee note.—Sections a to e of this Rule are based on the Uniform Foreign Depositions Act and are to be construed to effectuate the general purpose to make uniform the law of those states which adopt this act.

Chapter 500.

Trial.

RULES 501-599

General

Law

Equity

GENERAL

Rule 501. Separate Issue or Claim .....Gen'l.

a. *To Further Convenience or Avoid Prejudice.*

The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, or of any separate issue, or any number of claims, counterclaims, cross-claims, third-party claims or issues.
(G.R.P.P. Pt. Two, III, Rule 5a(4872), W.B. 501a, M.D. 501b.)

b. *Other Order—Protection of Party.*

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion in the action of a party against whom he has asserted no claim and who asserts no claim against him, and make other orders to prevent prejudice, delay or unnecessary expense.
(G.R.P.P. Pt. Two, III, Rule 5b(4872), W.B. 501b, M.D. 501c.)

c. *Application of Other Rules.*

This Rule shall not limit the effect of Rules 313 (Joinder of Parties and Claims — (Permissive)), 314 (Counterclaim and Cross-Claim) and 315 (Third-Party Practice).

Rule 502. Separate Trial of Issue of Law .....Gen'l.

a. *Question of Law—Stay—Appeal.*

At any stage of action, the court may, on application of any party or of its own motion if it shall appear that there is a question of law which it would be convenient to have decided before going further, direct such question to be raised for the court's decision in such manner as the court may deem expedient. All such further proceedings as may be rendered unnecessary by the decision of such

question shall upon the decision be stayed. Such proceedings as show the questions so decided and the decision thereon shall form a part of the record and be reviewable upon appeal after final judgment.
(Art. 75, § 134, W.B. 343a, M.D. 343, 503; art. 16, § 237, W.B. 560, M.D. 373f, 503.)

b. *Inferences by Court.*
The court may draw all inferences of facts or law that the court or jury could have drawn from the facts agreed or shown as if the same had been offered in evidence upon a trial before the court or before the court and a jury.
(Art. 26, § 16, W.B. 726, M.D. 523.)

Rule 503. Consolidation — Joint Hearing or Trial .....Gen'l.

a. *On Motion or Court's Volition—Limitation.*
When actions involving a common question of law or fact or a common subject matter are pending (a) before any court of law or before several of the courts of law of Baltimore City, or (b) before any court of equity or before either or both of the courts of equity of Baltimore City, any such court, upon motion or of the court's own volition, may order a joint hearing or trial of any or all of the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. This Rule shall not be construed to authorize the consolidation or joint trial of law actions with equity actions, or vice versa.
(G.R.P.P. Pt. Three, III, Rule 2(4879), W.B. 532, M.D. 502a, b, e; Proposed.)

Rule 510. Reservation of Points for Court in Banc .....Gen'l.

a. *Disqualification of Judge—Removal—Appeal—Election.*
When at the trial of any action any party shall require a point or question decided by the court to be reserved for the consideration of the court *in banc*, and any of the judges of the said court shall be disqualified to sit in such action, then it shall be lawful for the party at whose instance the point or question shall be reserved, to elect to have such point or question decided by the remaining judge who may be qualified to sit in such action, or to have the action removed to a court of a different circuit for a decision or to appeal to the Court of Appeals. If such party shall fail to file such election in writing within thirty days after the announcement of such disqualification, or within thirty days after the trial of the action, in case such announcement shall have been made before the trial, then such point or question shall be decided by the remaining judge, who may be qualified to sit. Provided, that every point or question reserved upon a motion for a new trial shall be decided by the remaining judge or judge who may be so qualified.
(Art. 75, § 131, W.B. 553a.)

b. *Reservation by Exceptions—Signature of Judge—Appeal.*
A point or question reserved for the court *in banc* shall be taken by means of exceptions, to be reduced to writing, and signed by the judge before whom the action may be tried, and so framed that the point or question may be fully presented as to both law and fact in case the action shall be transmitted to the Court of Appeals instead of being heard by the court *in banc*.
(Art. 75, § 132, W.B. 553b.)

c. *Removal—Action to Remain in Court to Which Removed.*
When an action shall be removed to another court upon a point or question reserved for the court *in banc*, as herein provided, the action shall remain in the said court for trial as if the same had originated therein.
(Art. 75, § 133, W.B. 553c.)

d. *Not Applicable to Baltimore City.*

This Rule does not apply in Baltimore City.

(Md. Const., art. IV, § 22.)

Committee note.—The above Rule is included because it is in pursuance of a constitutional provision (art. IV, § 22), but it is rarely used today.

Rule 515. Transfer of Action from Law to Equity and Vice Versa .....Gen'l.

a. *In Court's Discretion.*

Where it shall appear that the plaintiff is entitled to some relief or remedy, but not in the particular court, or on the side of the court in which the action is brought or the relief is prayed, the plaintiff shall not on that account be nonsuited or the case dismissed; but the case may, in the discretion of the court in which pending, be transferred by an order to such proper court or docket, either of equity or law, in the same county, as the nature thereof may require.

b. *Time.*

Such transfer may be made at any time, in an action at law, before the jury retire to consider their verdict, or in an action in equity, before the final decree is signed.

c. *Further Proceedings—Amendment.*

Thereupon such proceedings shall be had, by amendment of the pleadings and otherwise, as shall conform the case to the course of the court to which the same shall have been transferred, under such general or special rules as each of such courts may prescribe for the adjustment of costs, the prevention of delay and the promotion of justice.

(Art. 75, § 125, W.B. 520.)

Rule 521. Evidence—When Court May Require Production of ..Gen'l.

a. *When Necessary for Justice.*

Where at the trial, hearing or any other stage of an action, it shall appear to the court that the attendance or testimony of any person, or the production of any document or thing not produced by any party is necessary to the purposes of justice, the court may require any party to produce such document or thing for inspection by the court or jury, or may of its own motion issue process for the production of such person, document or thing.

(Art. 75, § 107, W.B. 515.)

b. *Postponement.*

The court may adjourn or postpone the trial or hearing, or name a day for the further trial or hearing, if the trial has begun, or if a hearing shall already have been had, in order that such person, document or thing may attend or be produced, upon such conditions in every case as to time, notice, cost and security, as the court may deem proper.

(Art. 75, § 107, W.B. 515.)

Rule 522. Objections to Ruling or Order—Method of Making ..Gen'l.

a. *Formal Exceptions Unnecessary.*

A formal exception to a ruling or order of the court is unnecessary.

(C. of A. 17(4824), W.B. 807b; Proposed.)

b. *Action Desired or Objection.*

For purposes of reconsideration by the trial court or review on appeal, it is sufficient that a party at the time the ruling or order of the court is made or

sought, makes known to the court the action which he desires the court to take or his objection to the action of the court, and unless requested by the court it shall not be necessary to state the grounds therefor.
(C. of A. 17(4824), W.B. 807b.)

c. *Lack of Opportunity to Object—No Prejudice.*
If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.
(C. of A. 17(4824), W.B. 807b.)

d. *Objection to Evidence.*

1. When Grounds Must Be Stated.
Unless requested by the court, it is not necessary to state the grounds for objections to evidence.
(C. of A. 17(4824), W.B. 807b.)

2. Time to Be Made—Waiver.
Every objection to the admissibility of evidence shall be made at the time when such evidence is offered, or as soon thereafter as the objection to its admissibility shall have become apparent, otherwise the objection shall be treated as waived.
(Proposed; Sup. Bench 538.)

3. Time for Disposition of—Proviso.
Such objection shall be disposed of forthwith, unless the court shall admit the evidence subject to exception; provided, however, that after the close of the evidence for the plaintiff the court shall, at the request of the counsel making the objection, determine the same before the defendant proceeds with his evidence. The same rule shall be applicable to an objection by the plaintiff to the defendant's evidence before plaintiff's evidence in rebuttal is given or prayers or requests for instructions are offered on either side.
(Proposed; Sup. Bench 538.)

e. *Application.*
Sections b, c and d of this Rule shall not apply to matters covered by Rule 554 (Instructions to the Jury).
(Proposed.)

Committee note.—Counsel are cautioned that in light of the Court of Appeals construction of its Rule 17, which is the foundation of Rule 522, a ruling of the court must be obtained upon each objection, in order to lay the proper foundation for an appeal.

The Committee eliminated the following words, following the word "evidence", in subsection d 1: ". . . except in circumstances in which it would heretofore have been necessary to call attention to special grounds for objection." This was the last part of the next to last sentence of Court of Appeals Rule 17.

The Committee also eliminated the following last sentence of Court of Appeals Rule 17: "Objections, other than objections to evidence, heretofore required to be made by exceptions in writing shall be made in writing." It was the feeling of the Committee that it was unable to determine at the present time what type of objections the above sentence refers to, unless it be to certain types of prayers, and the present method of objecting to instructions is covered by Rule 554.

Rule 525. Auditor—Action Involving Account .....Gen'l.

In an action founded on account, or in which it may be necessary to examine and determine on accounts between the parties, the court may order the accounts and dealings between the parties to be audited and stated by an auditor to be appointed by the court, and there shall be the same proceedings thereon as in a court of equity upon a bill for an account, reserving to the parties, however, the right to a jury trial if demanded.
(Art. 26, § 9, W.B. 615a, 644a, M.D. 525a.)

Rule 527. Continuance or Postponement .....Gen'l.

a. *Generally.*

1. In Court's Discretion.

The court may upon motion of any party, or of its own motion, continue an action from time to time in order that a trial may be had upon the merits or as the interests of justice may require; but

2. Not beyond Second Term unless by Consent, for Cause, or by Rule.

No action shall be continued beyond the second term after process has been served on the defendant, unless by consent of the parties, or upon good cause shown by the party asking the continuance, or when these Rules otherwise so provide.

(Art. 75, §§ 62, 71, 72, W.B. 548a, i, j; Proposed.)

b. *Attorney in Legislature.*

When it shall appear that any attorney of record of any party to any action at law or in equity is a member of the General Assembly of Maryland, and that said General Assembly of Maryland shall then be in session, such action shall be continued from time to time until ten days after said General Assembly of Maryland shall have adjourned, unless such attorney upon the call of such action for trial waive the benefit of this Rule. When it shall appear that any attorney of record of any party to any action at law or in equity is a member of the Legislative Council of Maryland, or one of its subcommittees, such action shall be continued when the said Legislative Council, or said subcommittee, as the case may be, is holding a meeting, unless such attorney shall upon the call of such action for trial waive the benefit of this Rule. Whenever it shall be necessary to file a brief or memorandum of law in any action at law or in equity, which has been continued under the provisions of this Rule, then such action shall be continued for a time sufficient to prepare and file such brief or memorandum.

(Art. 75, § 75.)

c. *Absent Witness.*

1. Motion for Continuance—Affidavit.

A motion for a continuance or postponement on the ground that the evidence of an absent witness is wanting must be supported by an affidavit of the party making the application or of some other credible person.

2. Affidavit—Contents.

The affidavit shall show that the testimony of the absent witness is material, competent and proper, that the affiant believes that the action cannot be tried with justice to the party without such evidence, that the affiant has used reasonable diligence to procure the same, and that the affiant has a reasonable expectation and belief that such witness can be procured within a reasonable time. The affidavit shall further show what facts the affiant believes the witness will prove, and not merely the effect of such facts in evidence, and that the affiant believes them to be true.

3. Examination by Court.

The court may examine the affiant on oath as to any of the matters alleged in the affidavit, and on what information or knowledge he believes the witness will prove what is alleged.

4. Effect ot Admission.

If, upon the affidavit, or upon examination, the court is satisfied of the truth of the affidavit and that the testimony is material and competent, the court may continue or postpone the case for such time as may be deemed necessary to enable the party to procure the attendance or obtain the testimony of such absent witness, unless the opposite party will admit that the absent witness would, if present, testify to the facts alleged in the affidavit.

5. *Consent to Deposition.*
Where the testimony of an absent witness, whether resident or nonresident, may be taken by deposition and the opposite party will not admit that the absent witness would if present testify to the facts alleged in the affidavit, the court may grant a continuance or postponement for the purpose of taking the deposition of such absent witness.

6. Right to Impeach or Contradict.
An admission by the opposite party, or the taking of a deposition, pursuant to paragraphs 4 and 5 hereof, shall not deprive the opposite party of the right to impeach or contradict the testimony of the absent witness in the same manner as if such witness had been present.
(Art. 75, §§ 63-65, 70, W.B. 548b-e; Proposed.)

d. *When New Trial Granted or Judgment Set Aside.*
Where a new trial is granted or where a judgment shall be set aside for fraud or irregularity, the court may continue or postpone the action so long as it shall deem necessary for a trial thereof.
(Art. 75, § 66, W.B. 548f.)

e. *Costs—By Whom Paid.*
Where a continuance or postponement is granted, the court shall make such order as to costs theretofore accrued as may be just.
(Art. 75, § 73, W.B. 548-1, 1st Dr. 555e.)

Committee note. — The Committee calls attention to the provisions of paragraph c 2 of the above Rule, providing that the affidavit set forth the facts, which the opposite party may admit, pursuant to paragraph c 4, or may result in the opposite party consenting to a deposition, pursuant to paragraph c 5, without the necessity of examination by the court, as was always necessary heretofore.

LAW

Rule 541. Dismissal—Voluntary ..... Law

a. *By Party.*
Without an order of court a party may dismiss his action, claim, counterclaim, cross-claim or third-party claim as to any other party only:

1. Before Evidence Taken.
By filing a notice of dismissal at any time before the introduction of any evidence at the trial or hearing; or

2. Stipulation.
By filing a stipulation of dismissal signed by all parties who have appeared in the action.
(G.R.P.P. Pt. Three, III, Rule 1a(4879), M.D. 531a, c; Proposed.)

b. *By Court Order.*
Except as provided in section a hereof voluntary dismissal shall be allowed only upon order of court and upon such terms and conditions as the court deems proper. If a party has pleaded a counterclaim before service upon him of an opponent's motion for voluntary dismissal, the dismissal shall not be allowed over such party's objection unless the counterclaim can remain pending for independent adjudication by the court.
(G.R.P.P. Pt. Three, III, Rule 1b(4879).)

c. *Effect.*
Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice; except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dis-

missed in any court of any state or of the United States an action based on or including the same claim.
(G.R.P.P. Pt. Three, III, Rule 1c(4879), W.B. 531c, M.D. 531d.)

d. *Costs.*

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs as to the action or the part dismissed. If a party, who has once dismissed a claim in any court, asserts substantially the same claim against the same defendant in another action, the court may make such order for the payment of costs in connection with the previous dismissal as it may deem proper and may stay the proceedings in the action until the party has complied with the order.
(G.R.P.P. Pt. Three, III, Rule 1d(4879), W.B. 531d, M.D. 531e.)

e. *Application.*

"Dismiss" or "dismissal" includes submission to a voluntary judgment of *nonpros* or nonsuit or other voluntary discontinuance.
(G.R.P.P. Pt. Three, III, Rule 1e(4879), W.B. 531e, M.D. 531f.)

Rule 542. Removal .....Law

a. *Right of—Suggestion under Oath.*

1. Suggestion under Oath—Reason.

In actions at law, issues from the Orphans' Court or from any court sitting in equity, appeals from the State Industrial Accident Commission pending in any of the courts of law of this State having jurisdiction thereof, upon suggestion in writing under oath of either of the parties to said proceedings, that such party cannot have a fair and impartial trial in the court in which the same may be pending, the court shall order and direct the record of proceedings in such suit, action or issue, to be transmitted to some other court having jurisdiction in such case, for trial.

2. Where All Judges Disqualified.

Such right of removal shall exist upon suggestion where all the judges of said court may be disqualified, under the provisions of the Constitution, to sit.

3. Other Court to Hear Case.

The court to which the record of proceedings in such action or issue may be so transmitted shall hear and determine the same as if such action or issue had been originally instituted therein.
(Const., art. IV, § 8; art. 75, § 109; art. 101, § 57, W.B. 551a.)

b. *Trial Magistrates—Cases from.*

When an action is brought to the circuit court for trial from a trial magistrate, except cases of appeal from the judgment of the trial magistrate, the circuit court shall be deemed to have original jurisdiction of such action, and the parties thereto shall be entitled to all rights of removal provided in section a of this Rule.
(Art. 75, § 110, W.B. 551b.)

c. *Record—Original Papers—Transmittal.*

1. Original Papers.

Where the record of the proceedings in an action shall be ordered to be transmitted to some other court for the trial of the action, the record to be transmitted shall consist of all the original papers filed in the action and a copy of the docket entries.
(G.R.P.P. Pt. Three, V, Rule 1.)

2. Clerk to Notify Parties.

Where a suggestion for the removal of an action is filed, the clerk shall notify

counsel for all parties as soon as the record is made up for transmission to the court to which the action has been ordered to be removed, giving such parties a reasonable opportunity for the inspection of the record.
(Art. 75, § 111, W.B. 551c.)

3. Record Shall Show Opportunity to Inspect.

An action so removed shall not stand for trial in the court to which sent unless it shall appear from the record so transmitted either that such opportunity to inspect the record has been given or that such inspection has been waived, either by a written statement to that effect filed in the action or by the lapse of the time prescribed in the notice sent by the clerk.

4. Not Applicable in Baltimore City.

Paragraphs 2 and 3 of this section shall not apply to Baltimore City.

5. Transmittal of Record.

The clerk shall append his certificate identifying such papers with reasonable definiteness and shall transmit the record to the clerk of the court to which the action has been ordered to be removed within five (5) days from the date of the order unless the court ordering the transmittal shall extend the time.
(G.R.P.P. Pt. Three, V, Rule 2.)

d. *Further Removal by Opposite Party.*

When an action shall be removed, the party at whose instance the action or issue was not removed may, if he shall think that justice cannot be done him in the court to which the action or issue has been removed, file an affidavit, as prescribed in section a of this Rule, in the court to which removal is ordered, suggesting that he cannot have justice in such court, whereupon the said court shall remove the action or issue to such other court having jurisdiction in such cases as justice may require.
(Art. 75, § 113, W.B. 551d.)

e. *Striking Out Order of Removal.*

1. Before Record Transmitted—Proviso.

Until the record in an action has been actually transferred from the court ordering the removal, the court passing the order of removal shall have power to strike out such order, on motion of the party applying therefor, provided said motion is made in time to permit the trial of the action at the same term of court at which the order for removal was passed. When so stricken out, the action shall proceed as if no motion for removal had been made.

2. No Further Removal after Term.

A motion for removal shall not be renewed by the same party after the expiration of the term at which the order for removal was stricken out.
(Art. 75, § 124, W.B. 551f.)

f. *Record—Cost of.*

The clerk shall not transmit the record in any removed action or issue until the cost thereof shall have been paid by the party suggesting the removal.
(Art. 75, § 118, W.B. 551g.)

g. *Record—Errors—Correction of.*

Where it appears that the record is not a true record of the proceedings in the court from which the action has been removed, the court to which the action has been removed may return the record to the clerk of the court from which the action has been removed, as often as may be necessary, and the clerk shall make such corrections and additions as may be necessary to obtain a correct record.
(Art. 75, §§ 117, 119.)

h. *Trial in Court to Which Removed.*

1. Early Trial.

The court to which an action is removed shall proceed with the trial thereof as promptly as possible.
(Art. 75, § 119, W.B. 551j.)

2. Validity of Proceedings.

In the event a record is returned, pursuant to section g of this Rule, all recognizances and other proceedings had in the court to which the case is removed shall be as good and valid as if the record originally transmitted had been correct in all its parts.
(Art. 75, § 119, W.B. 551j.)

Committee note. — Code, art. 75, § 114, providing for a special panel of forty-eight jurors to try a removed case has been omitted.

i. *Order by Court to Which Removed.*

The court to which an action has been removed may issue a warrant of resurvey, order, or other process to the sheriff, surveyor, or other officer of the county from which such action has been removed, or to the sheriff or other officer of any other county; and such officer shall be bound to execute and obey such process in the same manner as if issued from the court for the county from which such action was removed, or for the county in which such officer may reside.
(Art. 75, § 123, W.B. 551n.)

Committee note. — See Code, art. 75, § 123, for penalty authorized to be imposed against officer neglecting to execute process.

j. *Docket Entries to Be Sent to Original Court.*

In an action removed to another court under this Rule, after the action shall have been heard and determined, the clerk of the court in which the said action shall have been determined, shall immediately thereafter forward a copy of the docket entries in said action to the clerk of the court where the action was originally instituted, and said docket entries shall immediately, upon receipt be entered upon the docket by the clerk of the court where said action was originally instituted.
(Art. 75, § 121, W.B. 551-1.)

k. *Return of Original Papers.*

Within five (5) days after the time for appeal expires if no order for appeal has been filed, and within five (5) days after the final determination of the action if an appeal shall have been taken, the clerk of the court in which the action shall have been determined shall return the original papers to the court where the action was originally instituted.
(G.R.P.P. Pt. Three, V, Rule 3.)

l. *Execution in Removed Cases.*

1. By Clerk of Court in Which Judgment Obtained.

In an action removed to another county under this Rule, and in which a final judgment may be obtained, the clerk of the court in which such judgment has been obtained shall, on application of the plaintiff, issue execution on the judgment against the goods and chattels, lands and tenements, rights and credits of any defendant lying in the county in which said action was originally instituted; or, if the judgment is for the defendant, he may have the same remedy.
(Art. 75, § 120, W.B. 551k.)

2. Directed to Sheriff of Original County.

Such execution shall be directed to and served by the sheriff of the county in which the action was originally instituted, and returned to the circuit court for

the county of which he is sheriff, or to the Superior Court of Baltimore City, if in said city.
(Art. 75, § 122 W.B. 551m.)

3. Attested Copy of Judgment a Prerequisite.
It shall be sufficient for the plaintiff or defendant, to entitle himself to the benefit of such execution, to produce before the court to which the same is returnable, a short copy of the judgment by him obtained, attested by the clerk of the court before which the judgment was had.
(Art. 75, § 122, W.B. 551m.)

Rule 543. Jury—Selection, Strikes, Challenges, etc. .....Law

a. *Petit Jury.*

1. Lists of Twenty.
In an action in which a jury shall be necessary, twenty persons from the panel of petit jurors shall be drawn by the clerk under the direction of the court, and their names shall be written upon two lists, and one of said lists forthwith delivered to the respective parties.
(Art. 51, § 15, M.D. 533a.)

2. Parties May Dispense with Panel.
If the parties agree, the drawing of a panel of twenty jurors in any action may be dispensed with.
(Art. 51, § 18, M.D. 533e.)

3. Peremptory Strikes—Number.
Each party may peremptorily strike, without cause, four persons from the lists of twenty provided for in paragraph 1 of section a of this Rule, and the remaining twelve persons shall thereupon be immediately empaneled and sworn as the petit jury in the action. Several defendants or several plaintiffs shall be considered as a single party for the purpose of making such peremptory strikes.
(Art. 51, § 15, M.D. 533a; Proposed.)

4. *Additional Peremptory Strikes—When Allowed.*
Whenever it appears that the trial of an action by a jury involves two or more plaintiffs or two or more defendants having adverse or hostile interests, or involves multiple parties and claims, including third-party claims, whether in a single action or two or more actions consolidated or consolidated for trial, the court may allow additional peremptory strikes, from additional lists of jurors to be prepared by the clerk, but no party shall be allowed more than four such strikes.
(Proposed.)

5. *Additions to Lists of Twenty.*
In an action described in paragraph 4, the court shall direct the clerk to add to the lists provided for in paragraph 1 of section a of this Rule such number of additional names drawn from the panel of petit jurors or drawn as otherwise provided by law, as may be necessary.
(Proposed.)

6. Additional Jurors—Court to Summon.
The court shall direct talesmen to be summoned to serve on juries where, without such talesmen, there would not be twenty of the original panel, exclusive of the jury charged, from whom a jury can be formed; or may direct such talesmen to be summoned whenever in the judgment of the court a sufficient number of jurors of the regular panel cannot be had to try the action.
(Art. 51, § 17, M.D. 533d.)

7. Unused Strikes.
Upon the neglect or refusal of a party to exercise peremptory strikes allowed

by paragraphs 3 and 4 of section a of this Rule, or in the event that one or more jurors stricken by the parties coincide, the court may strike a sufficient number of the names remaining on one or both of said lists so that twelve persons shall remain, who shall be empaneled and sworn as the jury.
(Art. 51, § 16, M.D. 533b.)

8. Separation of Jury.

The jurors sworn to try an action may, at any time before the submission of the case to the jury be permitted by the court to separate or may be kept in charge of proper officers.
(Art. 51, § 26, M.D. 533f.)

b. *Protracted Trial—Alternate Juror.*

1. By Request or on Court's Motion—Panel—Strikes.

Where it appears that the trial of an action by a jury is likely to be protracted, the court may, upon the request of either party or upon its own motion, direct that there be empaneled one or two additional jurors, to be known as "alternate jurors". In such case each side shall be allowed one additional strike or challenge and the jury list submitted to the parties for strikes shall be increased accordingly. After the jury shall have been selected and before evidence shall have been taken the court shall designate which member of the panel shall be an alternate juror.

2. Seated with Other Jurors.

An alternate juror shall be seated with the jurors with equal power and facilities for seeing and hearing the proceedings in the action and shall take the same oath, and must attend at all times upon the trial of the action in company with the other jurors; and for a failure to do so is liable to be punished for contempt. He shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; and except as hereinafter provided shall be discharged upon the final submission of the action to the jury.

3. When Alternate to Substitute.

If before the final submission of the action, a juror die, or become ill, or for any other reason become unable to perform his duty, the court may order him to be discharged and draw the name of a previously qualified alternate, who shall then take the seat of the discharged juror in the jury box, and be subject to the same rules and regulations as though he had been selected as one of the original jury.
(Art. 51, § 27, M.D. 533g; Proposed (1).)

c. *Challenge—To Array or Poll.*

This Rule shall not affect the right of any person to challenge for cause, in the manner allowed by the law, the array or polls of any jury panel.
(Art. 51, § 16, M.D. 533c.)

Rule 544. Jury of Less than Twelve — Majority Verdict .....Law

The parties may stipulate that the jury shall consist of any number less than twelve, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.
(G.R.P.P. Pt. Three, III, Rule 3(4880), W.B. 533.)

Rule 550. Jury—Inspection by .....Law

a. *Of Property—On Application of Party.*

The court may upon the application of any party make such order as may be necessary in order to have the jury make an inspection of any property which is the subject of litigation, or of the place where any material fact in issue occurred.

b. *In Charge of Court Officer.*
The court may order the jury to be conducted in a body to such place, under the charge of an officer of the court and such place or property shall be shown to the jury by some person appointed by the court for that purpose.

c. *No Person to Speak to Jury.*
While the jury are making such inspection no person, other than the person so appointed by the court, shall speak to them on any subject connected with the trial.

d. *Costs.*
The court shall allow the cost of the transportation of the jury as other costs of such trial.
(Art. 75, § 105, W.B. 541.)

Rule 552. Directed Verdict .....Law

a. *Motion for—Grounds to Be Stated.*
In an action tried by a jury any party may move, at the close of the evidence offered by an opponent or at the close of all the evidence, for a directed verdict in his favor on any or all of the issues. Such motion shall state the grounds therefor.
(G.R.P.P. Pt. Three, III, Rule 4(4880), W.B. 534.)

b. *Offer of Evidence after Denial—Effect.*
A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted without having reserved the right to do so, and to the same extent as if the motion had not been made, in so doing he withdraws the motion.
(G.R.P.P. Pt. Three, III, Rule 4(4880), W.B. 534.)

c. *Reservation of Decision by Court.*
Instead of granting or denying the motion for a directed verdict, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge of the jury, but for the purpose of appeal such reservation constitutes a denial of the motion, unless judgment is rendered for the moving party pursuant to Rule 563 (Judgment N.O.V.).
(G.R.P.P. Pt. Three, III, Rule 4(4880), W.B. 534.)

d. *Application.*
In this Rule "motion" includes "prayer" and "move" includes "pray".
(G.R.P.P. Pt. Three, III, Rule 4(4880), W.B. 534.)

e. *Entry of Verdict by Clerk.*
Upon the granting by the court of an instruction directing a verdict, the court shall instruct the clerk to enter such verdict, and to note that it has been entered by the court's instruction. It shall not be necessary for the jury, by its foreman, or otherwise, to render such verdict.
(G.R.P.P. Pt. Three, III, Rule 4A(4880).)

Rule 554. Instructions to the Jury .....Law

a. *Prayers.*
At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file with the court written prayers that the court instruct the jury on the law as set forth in the prayers, and shall furnish to all adverse parties copies of such prayers.
(G.R.P.P. Pt. Three, III, Rule 6a(4880), W.B. 536a.)

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

1. Several Methods.

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

2. Summing Up Evidence.

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

c. *Charge, Technical Rules Inapplicable.*

An oral charge need not comply with the technical rules as to prayers.
(G.R.P.P. Pt. Three, III, Rule 6b(4880), W.B. 536b.)

d. *Objections.*

Before the jury retires to consider its verdict, any party may object to any portion of any instruction given or to any omission therefrom or to the failure to give any instruction, stating distinctly the portion or omission or failure to instruct to which he objects and the specific grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury. Either party shall have the right to express such objection in open court out of the presence of the jury, upon application, either orally or in writing, made before or after the conclusion of the charge.
(G.R.P.P. Pt. Three, III, Rule 6c (as amended, April 23, 1953) (4881), W.B. 536c.)

e. *Appeal.*

Upon appeal a party, in assigning error in the instructions, shall be restricted to (1) the particular portion of the instructions given or the particular omission therefrom or the particular failure to instruct distinctly objected to before the jury retired and (2) the specific grounds of objection distinctly stated at that time; and no other errors or assignments of error in the instructions shall be considered by the Court of Appeals.
(G.R.P.P. Pt. Three, III, Rule 6d(4881), W.B. 536d.)

Rule 556. Prayer—Not Substitute for Demurrer .....Law

a. *Sufficiency of Pleadings Not to Be Raised by Prayer.*

In the trial of all actions at law no question as to the sufficiency of the pleadings, as stating a cause of action or defense, which might have been raised by demurrer, shall be raised by prayer or instruction at the trial.

b. *Court May Pass on Sufficiency of Evidence.*

This Rule shall not prevent the court from passing upon the question of the legal sufficiency of the evidence to establish a cause of action or defense, although the determination of such question may involve the decision of questions of law which might have been raised by demurrer.
(Art. 75, § 97.)

Cross reference. — See Rule 345 (Demurrer).

Rule 558. Jury Room—What May Be Taken to .....Law

a. *In Court's Discretion.*

Upon retiring for deliberation, the jury may take with them into the jury room such of the pleadings, granted prayers or written instructions, and exhibits which have been received in evidence, as the court may deem necessary for a proper consideration of the case.

b. *As of Right—Notes.*
The jury may also take with them notes of the testimony or other proceedings taken by themselves but none taken by any other person.

c. *Return to Clerk.*
All such papers or exhibits, except the notes mentioned in section b hereof, shall be returned to the clerk before the jury is discharged.

d. *Exception.*
A deposition may not be taken into the jury room.
(Proposed.)

Committee note. — Many lawyers and judges have expressed interest in such a Rule. While Poe, Practice, §§ 328, 328A, says that the practice is to allow the pleadings and instructions to be taken to the jury room, he argues that the jury should have access to all the documents. The Codifier has examined the statutes of Minnesota, Idaho, Illinois, Montana and Iowa, all of which are variants of the same pattern, on which the above Rule was based. They uniformly allow papers received in evidence (except depositions) and the jury's personal notes, to be taken to the jury room. The Committee felt it best to place the whole matter in the court's discretion, except as to the notes. This would seem to be in accordance with the present ideas of the Court of Appeals of Maryland, as expressed in Bell v. State, 88 A. (2d) 567 (1952), where, in a criminal case, the Court held that allowing the exhibits to be taken to the jury room was not an abuse of discretion by the lower court. The Committee was unable to find any explanation for the reason why depositions could not be taken to the jury room but felt that to allow this might unduly emphasize the testimony of the deponent. None of the statutes referred to above permitted it.

Rule. 560. Special Verdict ..... Law

a. *Use—Method of Submission—Waiver—Judgment.*

1. In Court's Discretion.
The court may require a jury to return a special verdict in the form of a special written finding upon each issue of fact.

2. Method of Submission.
In that event the court may submit to the jury written questions susceptible of categorical or other brief answers or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring written findings thereon as it deems appropriate.

3. Court to Explain and Instruct.
The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue.

4. Omission—Jury Trial Waived unless Party Demands Submission.
If in submitting the issues the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury.

5. Finding on Omitted Issue.
As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

6. Judgment.
Upon the return of the special verdict of the jury, the court shall direct the entry of an appropriate judgment.
(G.R.P.P. Pt. Three, III, Rule 7a(4881), W.B. 537a.)

b. *Appeal.*

1. From Submission, Refusal or Instructions.

Upon appeal error may be assigned as to the submission of issues, or as to any explanation and instruction of the court, or as to any refusal of the court to submit a requested issue only in accordance with sections c and d of Rule 554 (Instructions to the Jury).

2. From Finding or Judgment.

Any express or implied findings by the court, and the judgment directed by it may be reviewed as provided in section d of Rule 564 (Trial by the Court).
(G.R.P.P. Pt. Three, III, Rule 7b(4881), W.B. 537b.)

Rule 561. Verdict—In Consolidated Action .....Law

In a jury trial of a consolidated action, the court may require the rendition of such joint or separate verdicts as the ends of justice may require.
(Proposed, M.D. 502c.)

Rule 562. Verdict—Not Necessary to Call Plaintiff .....Law

In the trial of an action at law it shall not be necessary to call the plaintiff before the verdict is rendered.
(Art. 75, § 185, W.B. 543, M.D. 545.)

Rule 563. Judgment N.O.V. .....Law

a. *Motion.*

1. When to Be Filed—3 Days.

Where a motion for a directed verdict made by a party at the close of all the evidence is denied, then (1) within three days after the reception of a verdict, such party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict, or (2) if a verdict was not returned, such party, within three days after the jury has been discharged, may move for a judgment in accordance with his motion for a directed verdict.

2. Reservation of Decision on Motion for Directed Verdict—Effect.

Where the court reserves decision on a motion for a directed verdict, and submits the case to the jury, that action by the court operates as a motion for judgment under this Rule.

3. Use with Motion for New Trial.

A motion for a new trial may be joined with a motion for judgment under this Rule, or a new trial may be prayed in the alternative.

4. Failure to Make Motion—Effect.

Failure to move for judgment under this Rule does not affect a party's right upon appeal to assign as error the denial of his motion for a directed verdict.
(G.R.P.P. Pt. Three, III, Rule 8a(4882), W.B. 538a, M.D 546a.)

b. *Disposition.*

1. If Verdict Returned.

If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment, and either order a new trial or direct the entry of judgment as if the requested verdict had been directed.

2. If No Verdict Returned.

If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed, or may order a new trial.

3. Court to Rule on Motion for New Trial.

If the motion for judgment is granted, the court shall also rule upon any motion

for new trial, but the new trial if granted shall be had only if the judgment so entered is reversed on appeal.
(G.R.P.P. Pt. Three, III, Rule 8b(4882), W.B. 538b, M.D. 546b.)

c. *Appeal—Effect of Reversal.*

1. Of Judgment N.O.V.

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

2. Of Refusal to Grant Motion.

Where a judgment is reversed on appeal for refusal of a motion for judgment pursuant to section a of this Rule, the Court of Appeals may enter judgment as if the requested verdict had been directed or may order a new trial.
(G.R.P.P. Pt. Three, III, Rule 8c(4883), W.B. 538c, M.D. 546c.)

d. *Nonjury Action.*

This Rule shall not apply to cases tried before the court without a jury.
(Proposed.)

Rule 564. Trial by the Court .....Law

a. *Submission for.*

The parties to an action may submit the same to the court for determination without the aid of a jury.
(Const., art. IV, § 8; art. 75, § 109, W.B. 539a.)

b. *Judgment.*

1. As Directed by Court.

Where a proceeding at law is tried upon the facts by the court, the court shall direct judgment to be entered upon the law and the evidence.

2. Memorandum of Grounds for Decision.

The court shall dictate to the court stenographer, or prepare and file, a brief statement of the grounds for its decision and the method of determining any damages awarded.

3. No Instructions, Objections or Exceptions.

A request for instructions and an objection or exceptions to the judgment or to the opinion of the court is not required for the purpose of review.
(G.R.P.P. Pt. Three, III, Rule 9a(4882), W.B. 539b.)

c. *Amendment.*

Upon a motion for a new trial the court may open such judgment, revise it or amend it, and may take additional testimony and direct the entry of another judgment.
(G.R.P.P. Pt. Three, III, Rule 9b(4882), W.B. 539c.)

Rule 565. Demurrer to Evidence .....Law

In a proceeding at law tried by the court without a jury, any party, without waiving his right to offer evidence in the event the motion is not granted, may move at the close of the evidence offered by an opponent for a dismissal on the ground that upon the facts and the law he has shown no right to relief. Unless the court otherwise specifies, such a dismissal operates as an adjudication upon the merits.
(G.R.P.P. Pt. Three, III, Rule 5(4880), W.B. 535.)

Rule 567. New Trial ..... Law

a. *Motion—When to Be Filed.*
A motion for a new trial shall be filed within three days after the reception of the verdict, or, in case of a trial by the court, within three days after the entry of the judgment.
(Proposed; M.D. 547a.)

b. *Grounds to Be Assigned.*
All reasons for said motion shall be filed in writing within the time limited for the filing of said motion, and no other reason shall be thereafter assigned without leave of court.
(Proposed; Sup. Bench 502; M.D. 547b.)

c. *Partial—Severable Matter.*
Where it appears to a court of law upon a motion for a new trial that any grounds for a new trial affect only a severable part of the matters in controversy, or only some or one of the parties, the court may grant a new trial as to such part, or as to such party and either enter final judgment as to the remaining parts or parties, or stay the entry of final judgment until after the new trial.
(G.R.P.P. Pt. Three, III, Rule 10(4883), W.B. 540, M.D. 547c.)

d. *Costs—Stay until Payment.*
The court in which an action shall be pending after a new trial has been ordered by that court, or by the Court of Appeals, shall have power to stay all further proceedings in such action until all or any of the costs adjudged by that court, or by the Court of Appeals, shall have been paid by the party adjudged to pay the same.
(Art. 75, § 74, W.B. 548m, M.D. 547d.)
(1st Draft Rule No. 548.)

Committee note. — Sections a and b were added to complete the new trial picture, in the interest of conformity. In adding these sections, the Committee felt that inasmuch as Rule 563 (Judgment N. O. V.) requires motions for judgment N. O. V. to be filed within three days, and also contemplates the use of motions for a new trial with motions for judgment N. O. V., the time for filing them should be made uniform. The language of section b was taken from the Rules of the Supreme Bench of Baltimore City, Rule 502.

EQUITY

Rule 572. Property or Income Pendente Lite ..... Equity

a. *Court May Make Order Regarding.*
The court may, subject to the provisions of these Rules relating to injunctions, at any stage of any action concerning property, real or personal, on application, or of its own motion, pass such order, with regard to the possession of the same, *pendente lite,* or the receipt of the income thereof, on such terms preliminary thereto as to security and other matters, as justice may require.

b. *Motion to Modify, Dissolve or Discharge.*
Any party may move for the modification, dissolution or discharge of such order.

c. *Appeal.*
Any party may appeal from any order passed under sections a and b of this Rule.
(Art. 16, § 233.)

Rule 580. Examiner ..... Equity

a. *Appointment.*
The Circuit Court for each of the counties, and the Supreme Bench of Baltimore City shall each appoint experienced and competent examiners, in number sufficient

for the proper conduct of the court's business, who shall, upon qualification, be officers of the court. For any special reason, a special examiner may be appointed.
(G.E. 34(4845), art. 16, § 311, W.B. 570a.)

b. *Compensation*
An examiner shall be entitled to receive ten dollars per action. However, the Court in which the action is pending may increase the total amount to be paid such examiner in any action when, in the opinion of said court, the examiner should receive additional remuneration. It shall be the duty of the examiner, in making his return to the court, to certify in each action at whose instance and for how long he has been employed.
(G.E. 34(4845), art. 16, § 311, W. B. 570a.)

c. *Powers.*
An examiner shall have authority to issue summons for witness, administer oaths, notify parties of the time of his sittings, and to preserve order and decorum during his sessions.
(G.E. 34(4845), art. 16, § 311, W.B. 570a.)

d. *Notice to Take Testimony—Summons.*
Where an action is at issue, involving matter of fact, or where evidence is required to be taken to be used in any proceeding in equity, the party desiring to take evidence shall notify one of the regular examiners, or any special examiner that may be appointed, of such desire, and furnish him with the titling of the action and the names of witnesses to be summoned to testify. The examiner so applied to shall fix a reasonable day for the examination of witnesses, and the taking of evidence, of which he shall give due notice to the parties. The examiner shall issue a summons for a witness for either party, except where he is required to proceed *ex parte.*
(G.E. 35(4846), art. 16. § 312, W.B. 570b.)

e. *Refusal to Obey Summons—Violation of Decorum.*
A person refusing to obey a summons issued by an examiner, or who shall be guilty of violating the order and proper decorum of any session of an examiner while in the discharge of his duties, shall be reported by the examiner, together with the facts of the occurrence, to the court. If, upon hearing, the court is satisfied that the person was guilty of the matter charged, it shall punish the offender as for contempt.
(G.E. 34(4845), art. 16, § 311, W.B. 570a.)

f. *Conduct of Examination.*

1. In Presence of Parties or Attorneys.
The examination of a witness before an examiner shall be conducted in the presence of the parties, or their attorneys, if they think proper to be present.

2. Method of Recording Testimony.
Testimony before an examiner may be taken stenographically and transcribed under the direction of the examiner, or the questions and answers may be written down by the examiner personally, unless (1) the parties agree on or (2) the court orders, another method to be used.

3. Written Interrogatories—Oral Examination.
The mode of examination shall be either by written interrogatories filed with the examiner, to be by him propounded to the witness, and the answers recorded as provided in paragraph 2 of this section; or orally, the examination and cross-examination being conducted as permitted in the trial of an action in open court, and the testimony recorded as provided in paragraph 2 of this section.

4. Order of Testimony.
The defendant shall not be compelled to proceed with the taking of his testimony until the plaintiff has finished or declared he has none to offer. The plain-

tiff shall not be compelled to proceed with his rebutting testimony until the defendant has completed his testimony.

5. Before Same Examiner.

The testimony produced by both parties shall be taken before the same examiner, unless, for special reasons, the court otherwise directs.
(G.E. 36(4846), art. 16, § 313, W.B. 570c.)

6. Language of Witness.

The testimony shall be written down in the language of, and as delivered by, the witness; but in the event the witness testifies in any language other than English, then his testimony shall be written down as interpreted into English.
(G.E. 38(4847), art. 16, § 315, W.B. 570e.)

g. *Divorce and Annulment Action.*

1. Examiner to Remain in Room.

In the examination of a witness pursuant to this Rule, in a divorce and annulment proceeding, it shall be the duty of the examiner to remain in the same room with the witness throughout the taking of the testimony and he shall so certify in his certificate to be filed pursuant to Section o of this Rule.

2. Examiner to Examine Witnesses.

The examiner shall examine or cross-examine any witness, notwithstanding such witness may have been examined by counsel, whenever in his judgment such examination or cross-examination is proper and necessary for a full presentation of the true facts of the action.

3. Report of Irregularities.

The examiner shall report to the court any irregularities or unusual circumstances in the taking of the testimony or the conduct of the proceedings.
(G.E. 38A(4847).)

h. *Examiner to Inquire into Residence and Prior Litigation.*

At the beginning of the examination of any party, the examiner shall question him as to his residence and the existence of any previous litigation between him and the adverse party, and shall cause the answers to said questions to be recorded.
(Proposed.)

i. *General Question to Each Witness.*

At the conclusion of the examination, the examiner shall put to the witness a question or interrogatory in the following form: "Do you know any other matter or thing which may be of benefit to any of the parties to this action or that may be material to the subject of your examination, or the matters in question between the parties? If your answer is yes, state the same fully." The examiner shall cause the answer to said question or interrogatory to be recorded.
(G.E. 37(4846), art. 16, § 314, W.B. 570d.)

j. *Defendant Not Appearing — Testimony ex Parte.*

Where any defendant has appeared and an order to take testimony before an examiner has issued, and there is another defendant who is in default for not appearing or answering, and against whom an order to take testimony *ex parte* might issue, it shall not be necessary to pass such order, but the plaintiff may take all his testimony before the examiner, and such testimony shall be available against the defendant who is in default, as if such testimony had been taken under an *ex parte* order.
(Art. 16, § 330, W.B. 570j.)

k. *Use with Motion, Interlocutory Application, etc.—Order of Court.*

Upon any petition, motion, or other interlocutory application in any action for

the hearing and determination of which evidence may be required, the court may order testimony to be taken before an examiner to be used at the hearing of such matter upon such notice and in such manner as the Court may direct.
(G.E. 42(4848), art. 16, § 323, W.B. 570i.)

Committee note. — The provision of General Equity Rule 42 and Code, art. 16, § 323, allowing testimony to be taken before a justice of the peace has been eliminated.

l. *Special Matter—Report.*

The examiner may, upon all examinations, state any special matters to the court that he may deem proper, to enable the court the better to understand the evidence.
(G.E. 38(4847), art. 16, § 315, W.B. 570e.)

m. *Objections — Privilege — Decision by Court.*

1. Objections — Notation by Examiner — No Power to Decide.

A question that may be objected to by either of the parties shall be noted by the examiner upon the deposition; but he shall not have power to decide on the competency, materiality or relevancy of any question proposed or evidence elicited, nor as to the competency or privilege of any witness offered.

2. Privilege—Refusal to Answer—Decision by Court.

A question of privilege raised by a witness, or the refusal of any witness to answer a question propounded, shall be reported by the examiner to the court for decision. The court shall hear and determine such question without delay, and may award costs as justice may require.

3. Incompetent Evidence — Costs.

The court shall deal with and direct the payment of the cost of incompetent, immaterial or irrelevant evidence, or any part thereof, as justice may require, apart from the general costs of the action.
(G.E. 38(4847), art. 16, § 315, W.B. 570e.)

n. *Signature.*

1. By Witness.

The testimony shall be signed by the witness in the presence of the parties or their attorneys, or such of them as may attend, unless such signing be waived.

2. By Examiner.

If the witness is not able to sign the testimony, or shall for any reason refuse to do so, and the signature is not waived, the examiner shall sign the testimony stating the reason why the witness has not done so.
(G.E. 38(4847), art. 16, § 315, W.B. 570e.)

o. *Filing in Court — Exhibits.*

When the examination of witnesses is concluded, the original depositions, together with all exhibits, papers or things filed with the examiner as evidence, shall be put together in proper and convenient order, and be authenticated by certificate and signature of the examiner. He shall enclose them in an envelope, with the titling of the action endorsed thereon, and file them with the clerk of the court without delay.
(G.E. 39(4847), art. 16, § 316, W.B. 570f.)

p. *Delay to Be Avoided — Order to Close Testimony.*

Testimony shall be taken without unnecessary delay. After the lapse of a reasonable time for the taking of testimony, either party may obtain an order against the adverse party to close the taking of his testimony within such reasonable time after notice of such order as may be deemed proper. Testimony taken after the lapse of that time shall not be read in evidence at the hearing of the

cause. The court may enlarge the time, on application of the party against whom such order may have been obtained, upon sufficient cause shown.
(G.E. 40(4848), art. 16, § 317, W.B. 570g.)

q. *Testimony to Lie in Court 10 days—Waiver—Exception.*
The clerk shall open the deposition filed with him, and it shall remain in court ten days, subject to exception, before the cause shall be taken up for hearing, unless by agreement of the parties such time be waived. After the expiration of such time the action shall stand for hearing, unless sufficient cause be shown to the contrary.

1. Interlocutory Applications Excepted.
This section shall not apply to interlocutory applications.
(G.E. 41(4848), art. 16, § 318, W.B. 570h.)

r. *Allowances — Enforcement of Payment.*
Payment of the allowances to examiners, their clerks and to witnesses may be compelled by order of court, and process of contempt for disobedience to such order may be issued as in other cases.
(Art. 16, § 208, W.B. 570k.)

Rule 581. Testimony in Open Court .....Equity

a. *When Taken—On Application or Court Order.*
The court shall, on application of a party in interest, or may, of its own motion, order that the testimony shall be taken orally in open court, in the same manner and under the same rules as testimony is now taken in an action at law, as to all or any of the facts or matters relevant in the proceeding.
(G.E. 43(4848), art. 16, §§ 320, 321, W.B. 561a, c.)

b. *Transcript of Testimony.*
The testimony shall be written down as delivered by the witnesses by such person and in such manner as the court may have by order or general rule directed, and when so written down shall, with such documentary proof as shall have been with it offered and admitted, be filed as part of the proceedings. Where the evidence has been taken in shorthand and no appeal has been noted, the same need not be afterwards written down or typewritten, or filed unless the court shall so order.
(Art. 16, § 320, W.B. 561b.)

c. *Rejected Evidence—Proffer—Appeal.*
Evidence to which objection has been made and sustained by the court shall not be taken down or inserted in the record, but the party offering such evidence may accompany the offer of the same with a statement of the facts proposed to be shown in connection therewith, and such proffer shall be considered by the court in connection with the question. The Court of Appeals, upon appeal from any final order in the case, shall consider and determine, upon the record, all objections to testimony taken and reserved during the progress of the action.
(Art. 16, § 321, W.B. 561d.)

Rule 595. Auditor .....Equity

a. *Appointment*
Each court of equity may appoint, during its pleasure, an auditor for the court. All accounts to be stated, audited or settled by such court, shall be referred for such purpose to the auditor, who shall have power to administer oaths to all and shall audit, state and settle such accounts agreeably to the order of the court, and shall return the same to the court.

b. *Special Audior.*
Where the regular auditor of any court may be interested in any action or con-

nected therewith as counsel, or in case of sickness, or absence or for other cause existing where it may not be proper for such auditor to act, the court shall appoint a special auditor, to whom references shall be made instead of the regular auditor. The powers, duties and compensation of such special auditor shall be the same as those of the regular auditor.
(Art. 16, § 20, W.B. 615g, M.D. 525b, 585a, b, d.)

c. *Avoidance of Delay.*
Where a reference is made to the auditor the party at whose instance the reference is made, shall, without unnecessary delay, cause the matter of reference to be laid before the auditor; and if such party shall omit to do so any other party interested in the subject-matter of the reference may cause the matter to be laid before the auditor, who shall proceed therein without delay.
(G.E. 51(4850), art. 16, § 22, W.B. 615b, M.D. 525d1.)

d. *Hearing—Notice.*
Upon such reference it shall be the duty of the auditor, if evidence is to be produced, or vouchers filed, to assign a time and place for proceeding and to give notice thereof to the parties; and if either party shall fail to attend at the time and place appointed, the auditor may proceed in the absence of such party, or, in his discretion, adjourn to a future day, giving notice thereof to the parties, but noting all the cost that may attend such adjournment, which shall be subject to the order and direction of the court. It shall be the duty of the auditor to proceed with all reasonable diligence. Either party may apply to the court for an order to the auditor to speed the proceedings and to make his report, and to certify to the court the reasons for any delay that may have occurred.
(G.E. 52(4850), art. 16, § 23, W.B. 615c, M.D. 525d2, e.)

e. *Conduct of Hearing—Production of Papers.*
The auditor shall regulate all the proceedings in every hearing or examination before him. In addition to his power to examine the parties and witnesses produced by them, on oath, he may require the production of all books, papers and other documents applicable thereto, where, by a court of equity, the production of such writings may be compelled. If any party so liable to produce such books, papers or other documents, shall fail or refuse so to do, such party shall, without delay, be reported to the court by the auditor, with the facts of the case, that the proper proceeding may be taken thereon, by way of attachment for contempt or otherwise, as justice may require.
(G.E. 53(4850), art. 16, § 24, W.B. 615d, M.D. 525f1, f3, g1.)

f. *Examination Oral or Interrogatories.*
A party accounting before the auditor shall produce his accounts in the form of debtor and creditor, and any other party interested, who shall not be satisfied with the account so produced, may examine the accounting party orally or upon written interrogatories, before the auditor, who shall write down and report the testimony, if required. Where the auditor may be required to take testimony to be reported to the court, he shall observe and pursue the same mode and form of examination, and writing down the testimony, as that prescribed by Rule 580 (Examiner).
(G.E. 54(4851), art. 16, § 25, W.B. 615e, M.D. 525f2, g2, g3.)

g. *Allowances—Enforcement of Payment.*
Payment of allowances to an auditor may be compelled by order of the court, and process of contempt for disobedience to such order may be issued.
(Art. 16, § 208, W.B. 570k, M.D. 585f.)

Rule 596. Master—Enforcement of Allowances .....Equity

Payment of allowances to masters may be compelled by order of the court, and process of contempt for disobedience to such order may be issued as in other cases.
(Art. 16, § 208, W.B. 570k.)

Chapter 600.
Special Proceedings.

RULES 601-699

(In Preparation.)

Chapter 700.

Judgment.

RULES 701-799

General

GENERAL

Rule 701. Entry by Clerk—On Consent of Parties .....Gen'l.

At any term of court, in the absence of the judge, by consent of the parties, the clerk may enter up judgment on the appropriate docket, in the same manner as if the judge was present; and the same shall be as effectual as if the judge was in court.
(Art. 17, § 62; 1st Dr. 702.)

Rule 703. Entry of Satisfaction .....Gen'l.

a. *On Order of Plaintiff.*
The clerk may enter any judgment satisfied upon the order in writing of the plaintiff and shall file such order among the papers in the action.
(Art. 17, § 31.)

b. *Judgment of Justice of the Peace.*
The clerk having the custody of the dockets of a justice of the peace or trial magistrate may enter satisfied a judgment standing open upon such docket, upon the production by the party applying for such entry, of the receipt of the plaintiff in the judgment, attested by a justice of the peace or trial magistrate.
(Art. 17, § 32.)

Rule 704. Costs .....Gen'l.

a. *Prevailing Party Entitled to Judgment for.*
Unless otherwise provided by law, or ordered by the court, the prevailing party shall be entitled to the allowance of court costs, which may be taxed by the clerk and embraced in the judgment. The action of the clerk in taxing costs may be reviewed by the court on motion.
(Proposed.)

b. *Bad Faith—Unjustified Proceedings—Delay.*
In an action or part of an action, if the court finds that any proceeding was had (1) in bad faith, (2) without substantial justification, or (3) for purposes of delay, the court shall require the moving party to pay to the adverse party the amount of the costs thereof and the reasonable expenses incurred by the adverse party in opposing such proceeding, including reasonable attorneys' fees.
(Proposed.)

c. *Equitable Plaintiff—Liability for.*
Where an action shall be marked for the use of any person, the person to whose use the action is marked shall be liable for costs as if he were the legal plaintiff.
(Art. 24, § 8, M.D. 127.)

1. *Proviso.*
Section c of this Rule shall not relieve a person, except the State of Maryland, who has entered a case to the use of another from his original liability for costs.
(Proposed.)

Rule 705. Multiple Claims — Judgment upon .....Gen'l.

a. *When Entered—As to Part or All.*
Where more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.
(G.R.P.P. Pt. Two, III, Rule 6a(4872), W.B. 705a.)

b. *Stay of Judgment.*
Where a court has ordered a final judgment on some but not all of the claims presented in the action, the court may stay enforcement of that judgment until

the entering of a subsequent judgment and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
(G.R.P.P. Pt. Two, III, Rule 6b(4873), W.B. 705b.)

c. *Judgment on Counterclaim.*

Where money damages are awarded on a claim and counterclaim, judgment for the excess of one over the other, with costs of suit, shall be given in favor of the plaintiff or defendant, as the case may be, or if such excess is below the jurisdiction of the court, the finding shall have the same effect given a like verdict under Rule 753 (Verdict below Jurisdictional Amount).
(G.R.P.P. Pt. Two, III, Rule 6c(4873), W.B. 705c.)

d. *Dismissal of Opposing Claim.*

Judgment may be rendered on a counterclaim or cross-claim even if the claims of the opposing party have been dismissed or otherwise disposed of.
(G.R.P.P. Pt. Two, III, Rule 6d(4873), W.B. 705d.)

e. *Recovery over.*

Where in a single action a joint judgment has been entered against more than one defendant, and one of such defendants has discharged the judgment by payment or has paid more than his pro rata share thereof, then in any case where a right of contribution or recovery over as between such defendants exists, an appropriate judgment against any other defendant may be entered, after 15 days' notice, upon motion by the defendant and proof of payment.
(G.R.P.P. Pt. Two, III, Rule 6e(4873).)

Rule 706. Consolidated Action—Judgment in .....Gen'l.

In a consolidated action, in a trial before the court, the court may render such joint or separate judgments, and in a jury trial, may require the rendition of such joint or separate verdicts as justice may require.
(Proposed.)

Rule 710. Summary Judgment .....Gen'l.

a. *Motion for.*

1. When and by Whom Made.

In an action, a party asserting a claim, whether an original claim, cross-claim, counterclaim, or third-party claim, or a party against whom a claim is asserted, may at any time make a motion for a summary judgment in his favor as to all or any part of the claim on the ground that there is no genuine dispute as to any material fact and that he is entitled to judgment as a matter of law.
(G.R.P.P. Pt. Two, IV, Rule 1a(4873).)

2. Effect on Time for Pleading.

A motion for summary judgment does not affect the time for pleading unless the court orders otherwise.
(G.R.P.P. Pt. Two, IV, Rule 1a(4873).)

3. Use of Affidavits.

The motion must be supported by affidavit when filed with the pleading asserting the claim or before the defending party has pleaded in answer to it; otherwise the motion may be made with or without supporting affidavits. The adverse party may file opposing affidavits before the day of the hearing.
(G.R.P.P. Pt. Two, IV, Rule 1b(4874), W.B. 710a-2.)

4. *In Lieu of Hearing on Bill and Answer.*
Cases formerly heard on bill and answer may be heard under this Rule.
(Proposed.)

Committee note. — After extensive research by the Reporter, and thorough discussion in Committee, the Committee was of the opinion that the summary judgment procedure was intended to take the place of the older method of setting a case for hearing on bill and answer upon motion of the plaintiff only. Under the summary judgment procedure, either plaintiff or defendant can make such a motion, evidence may be taken if necessary, judgment or decree may be rendered for part of a claim, and the risks attendant upon hearing a case on bill and answer are not present. The summary judgment procedure is more elastic, and less likely to have pitfalls for the unwary. In proposing paragraph 4 of section a of this Rule, the Committee calls attention to the case of Washington Suburban Sanitary Commission v. Buckley, 197 Md. 203 (1951), to which plaintiff's motion for summary judgment was granted, and the Court of Appeals, in affirming, said, at p. 211: "We think the question may be readily decided, as it was, upon bill and answer."

b. *Form of Affidavit—Further Evidence.*
Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn, or certified or photostatic copies of all material papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith or their absence satisfactorily explained. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.
(G.R.P.P. Pt. Two, IV, Rule 2(4874).)

c. *Time of Hearing.*
1. Motion before Defense Asserted.
Where a claimant files the motion with his pleading asserting the claim, or thereafter but before the adverse party has pleaded in answer to it, the motion, upon not less than fifteen days' notice by either party, may be heard at any time after the expiration of the time allowed by law or rule of court to plead in answer to such claim. Every such motion shall be accompanied by a notice to the adverse party (1) stating the time at or after which the motion may be heard, and (2) warning him that upon his failure to plead in answer to the claim within the time allowed by law or rule of court, judgment will be entered against him.
(G.R.P.P. Pt. Two. IV, Rule 3a(4874).)

2. Motion after Defense Asserted.
Where a motion is filed after pleadings in answer to the claim have been filed, the motion, upon not less than ten days' notice by either party, may be heard at any time. The motion shall be accompanied by a notice stating the time at or after which it may be heard.
(G.R.P.P. Pt. Two, IV, Rule 3b(4874).)

3. Absence of Defense.
After motion and notice and upon failure of the adverse party to plead in answer to the claim within the time allowed by law or rule of court, the court may, at any time thereafter, without hearing and without further notice to the adverse party, enter a judgment in conformity with section d of this Rule.
(G.R.P.P. Pt. Two, IV, Rule 3c(4874).)

d. *Proceedings on Motion.*
1. Motion Granted.
The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character,

may be rendered on the issue of liability alone although there is a genuine dispute as to the amount of damages. Where appropriate, the court on the hearing may render judgment for the opposing party even though he has not filed a cross-motion for summary judgment.
(G.R.P.P. Pt. Two, IV, Rule 4a(4874).)

2. Affidavit of Defense Not Available.

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as justice may require.
(G.R.P.P. Pt. Two, IV, Rule 4b(4875).)

3. Part of Claim—No Genuine Issue.

If at the hearing it appears that there is no genuine dispute as to part of the claim or as to the defense to part of the claim, the court in its discretion may render judgment forthwith as to that part, upon such terms as it thinks fit. In such case, the action shall proceed on the disputed part of the claim; and the court shall retain jurisdiction of the action, even though the disputed part is below its jurisdictional amount, if the original claim was within its jurisdiction. If the summary judgment or judgment on the disputed portion is below the jurisdiction of the court, Rule 753 (Verdict below Jurisdictional Amount) shall apply, except that execution on the combined judgments may issue from the court entering them, if their sum is within its jurisdiction.
(G.R.P.P. Pt. Two, III, Rule 4c(4875).)

4. Order Limiting Issues.

If on the motion judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, a party shall not be limited at the trial to the facts stated in his affidavit. But in such case, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in the controversy, and direct such further proceedings in the action as justice may require. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.
(G.R.P.P. Pt. Two, III, Rule 4d(4875).)

5. Amendment Not Limited.

This Rule shall not limit or affect the power of the court to permit amendment of the pleadings at any stage of the proceedings.
(G.R.P.P. Pt. Two, IV, Rule 4e(4875).)

e. *Bad Faith.*

Should it appear to the satisfaction of the court at any time that any motion or affidavit presented pursuant to this Rule is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the offending party to pay to the other party the amount of the reasonable expenses which the filing of the motion or affidavit caused him to incur, including reasonable attorneys' fees.
(G.R.P.P. Pt. Two, IV, Rule 5(4875).)

Rule 713. Declaratory Judgment .....Gen'l.

a. *Procedure to Be in Accordance with Article 31A.*

The procedure for obtaining a declaratory judgment shall be in accordance with Code, Article 31A, which reads as follows:

1. Scope.

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.
(Art. 31A, § 1; 1st Dr. 713a.)

2. Power to Construe.

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity, arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.
(Art. 31A, § 2; 1st Dr. 713b.)

3. Before Breach.

A contract may be construed either before or after there has been a breach thereof.
(Art. 31A, § 3; 1st Dr. 713c.)

4. Executor.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or *cestui que trust,* in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.
(Art. 31A, § 4; 1st Dr. 713d.)

5. Enumeration Not Exclusive.

The enumeration in sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in section 1, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.
(Art. 31A, § 5; 1st Dr. 713e.)

6. Discretionary.

Relief by declaratory judgment or decree may be granted in all civil cases in which an actual controversy exists between contending parties, or in which the court is satisfied that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation, or when in any such case the court is satisfied that a party asserts a legal relation, status, right, or privilege in which he has a concrete interest and that there is a challenge or denial of such asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein, and the court is satisfied also that a declaratory judgment or decree shall serve to terminate the uncertainty or controversy giving rise to the proceedings. When, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, or an equitable remedy, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute

or not, shall not debar a party from the privilege of obtaining a declaratory judgment or decree in any case in which the other essentials to such relief are present; but proceeding by declaratory judgment shall not be permitted in any case in which divorce or annulment of marriage is sought. The court may order a speedy hearing of an action for a declaratory judgment, and may advance it on the calendar.
(Art. 31A, § 6; 1st Dr. 713f.)

7. Review.

All orders, judgments and decrees under this Article may be reviewed as other orders, judgments and decrees.
(Art. 31A, § 7; 1st Dr. 713i.)

8. Supplementary Relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.
(Art. 31A, § 8; 1st Dr. 713j.)

9. Jury Trial.

When a proceeding under this Article involves the determination of issues of fact, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, and either a general or special verdict may be taken.
(Art. 31A, § 9; 1st Dr. 713h.)

10. Costs.

In any proceeding under this Article the court may make such award of costs as may seem equitable and just.
(Art. 31A, § 10; 1st Dr. 713k.)

11. Parties.

When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney-General of the State shall also be served with a copy of the proceeding and be entitled to be heard.
(Art. 31A, § 11; 1st Dr. 713g.)

12. Construction.

This Article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.
(Art. 31A, § 12; 1st Dr. 713l.)

13. Words Construed.

The word "person" wherever used in this Article, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever.
(Art. 31A, § 13; 1st Dr. 713m.)

14. Provisions Severable.

The several sections and provisions of this Article except Sections 1 and 2 are hereby declared independent and severable, and the invalidity, if any, of any part

or feature thereof shall not affect or render the remainder of the Article invalid or inoperative.
(Art. 31A, § 14; 1st Dr. 713n.)

15. Uniformity of Interpretation.
This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.
(Art. 31A, § 15; 1st Dr. 713o.)

16. Short Title.
This Article may be cited as the Uniform Declaratory Judgments Act.
(Art. 31A, § 16; 1st Dr. 713p.)

Rule 717. Principal and Surety—Judgment against .....Gen'l.

a. *Execution by Surety after Payment.*
Where a person shall recover a judgment against the principal debtor and surety, and the amount due on the judgment shall be satisfied by the surety, the creditor shall assign the same to the surety, and such assignment being filed in the court where the judgment was rendered, the assignee shall be entitled to execution in his own name against the principal for the amount so paid by the surety.
(Art. 8, § 7.)

b. *Sureties—Payment by One of Several—Contribution.*
Where a judgment shall be rendered against several sureties and the amount unpaid on the judgment shall be satisfied by any of the sureties, the plaintiff shall be obliged to assign such judgment to the surety satisfying the judgment who shall be entitled to execution in his name against the other sureties in the judgment, for a proportionate part of the judgment so paid by the assignee; provided, that no defendant shall be precluded from his remedy against the plaintiff, or his co-sureties by equitable proceedings.
(Art. 8, § 8.)

c. *Judgment for State—Entry to Use of Surety Satisfying Same.*
Where judgment shall be recovered by the State against any principal debtor and a surety, and the judgment shall be satisfied by the surety, the same shall be entered by the attorney representing the State to the use of the surety satisfying the judgment, on the attorney's filing in the action a certificate of the comptroller stating that the judgment has been so satisfied, and the surety shall then be entitled to execution in his own name against the principal and the other sureties, as provided in sections a and b of this Rule.
(Art. 8, § 9.)

Rule 719. Recording of Judgment .....Gen'l.

a. *Where Title to Real Estate Involved.*
The clerk shall make up a record of the proceedings in every action where the title to real estate has been decided by judgment and where any land or tenement has been seized and sold under execution, together with the return to such execution. The record of each such judgment and proceeding shall be made up within six months from the time when such judgment was finally rendered. Where any sale of land or tenement shall be made under two or more writs of execution, it shall be sufficient to make up the record only of the elder of the judgments, upon which such writs were issued with the execution, return and sale under such writ; and of each of the other judgments there shall be embraced in

record only a short copy, and only the docket entries of the writs of execution thereon. The clerk shall not record any judgment except such as relates to the title to land, or under which land has been sold in virtue of an execution thereon. (Art. 17, § 35; New; 1st Dr. 719b.)

b. *Of United States District Court.*

1. When Becomes a Lien.

In order to constitute a lien against real estate, a judgment of the United States District Court for the District of Maryland shall be indexed and recorded in the same manner that a judgment of a court of this State is indexed and recorded. (Art. 17, § 19.)

2. Territorial Limits; Transcript.

A judgment of the United States District Court for the District of Maryland shall constitute a lien against real estate only within the jurisdictional limits of the county wherein the situs of said District Court entering or rendering said judgment is located, in the same manner as a judgment of a court of this State constitutes a lien in the county wherein the judgment is entered or rendered; provided, however, that a transcript of a judgment of the District Court when indexed and recorded in any county other than the county in which it is entered or rendered, shall constitute a lien against the real estate in the county wherein said transcript is indexed and recorded from the date of the filing thereof with the clerk of the court of any county.
(Art. 17, § 20.)

3. Clerk to Accept and File Transcript.

The clerks shall accept for filing a transcript of any judgment of the United States District Court for the District of Maryland, and shall index and record the transcript in the same manner as a transcript of a judgment of a court of this State is indexed and recorded.
(Art. 17, § 21.)

Committee note.—Paragraphs 1, 2 and 3 of section b of this Rule are based upon Code, article 17, §§ 19-21, which were passed for the purpose of authorizing the filing of judgments and decrees of the United States District Court for the District of Maryland in accordance with § 1962 of article 28 of the United States Code Annotated.

Rule 720. Lien of Judgment ..... Gen'l.

a. *Leasehold Property.*

A judgment shall constitute a lien to the amount and from the date thereof upon all leasehold interest and terms for years of the defendant in land, except a lease from year to year and a lease for terms of not more than five years and not renewable, to the same extent and effect as a lien is created by judgment upon real estate. A certified copy of the docket entries from the clerk of the court where any judgment is obtained, or judgment of any justice of the peace originally recorded, when recorded upon the judgment record of any other court, shall be and constitute a lien, from the date of its being recorded, upon the property of the defendant in the county, in which it is recorded to the same extent as in the county where the judgment was originally obtained or justice's judgment originally recorded.
(Art. 26, § 20.)

Committee note.—See Code, article 16, § 252, relating to the manner of creating a lien where a judgment for the payment of money is made against a plaintiff in equity.

b. *Of Court of Appeals.*

A judgment of the Court of Appeals of Maryland shall not constitute a lien upon real or leasehold property situated in any county other than the county from the court of which the original judgment appealed from was rendered, except from

the date of entry of a copy of the docket entries of the judgment of the Court of Appeals by the clerk of the court of the county in which the real or leasehold estate is situated. When so recorded such judgment or decree of the Court of Appeals shall constitute a lien in the same manner and with the same effect as a judgment or decree entered by a court and recorded in such county in which the real or leasehold estate is situated.
(Art. 5, § 77; New.)

Rule 722. Execution ..... Gen'l.

a. *Execution or Attachment within 12 Years.*

On a judgment of a court and on a judgment of a justice of the peace recorded in the clerk's office of any court, an execution or attachment may issue out of such court or by the clerk thereof, at any time within twelve years from the date of the judgment. The judgment may be otherwise proceeded on within twelve years from its date.
(Art. 26, § 21.)

b. *Order of Court—Enforced as Judgment.*

An order of court may be enforced in the same manner and by the same writs as a judgment to the same effect.
(Art. 26, § 22.)

c. *Death or Marriage of Plaintiff.*

In case of the death of a plaintiff in a judgment, the executor, administrator or other person entitled to the judgment shall, on application to the clerk having control of the docket whereon such judgment is entered or recorded, be made a party thereto by suggesting in writing the death of the plaintiff and causing his name to be inserted in the place of the plaintiff or his legal representative, and have execution or attachment as the plaintiff might have had. In the case of the marriage of a female plaintiff in a judgment, she may suggest in writing her marriage, and have execution or attachment thereon, in her new name.
(Art. 26, § 21, W.B. 722d.)

d. *Death or Marriage of Defendant.*

In case of the death of a defendant in a judgment, the plaintiff shall, at any time within twelve years from the date of the judgment, upon a suggestion supported by affidavit of the death of a defendant, be entitled to have an execution or attachment issued against the defendant still alive, and such execution or attachment may be laid on any goods, chattels, lands and tenements of any remaining defendant. Upon the marriage of a female defendant in a judgment, the plaintiff may suggest in writing her marriage, and have execution or attachment thereon, in such defendant's new name.
(Art. 26, § 21, W.B. 722e; Proposed.)

e. *More than One Attachment or Execution—Costs.*

The plaintiff in a judgment may have more than one attachment or execution laid in the hands of different persons, or levied on other property than that taken under the first, though the first be still outstanding; provided, that only one satisfaction of the debt or demand shall be made, and provided that it shall be in the discretion of the court in such case, whether any costs, and if any, what amount of costs shall be allowed on a subsequent attachment or other execution.
(Art. 26, § 21, W.B. 722g.)

f. *Different County.*

This Rule shall apply also to an attachment or execution directed to a county different from that in which the judgment or decree was rendered.
(Art. 26, § 21, W.B. 722h.)

g. *Against Either of Joint Debtors.*

A plaintiff in a judgment rendered on a joint and several bond, penal or single bill may levy the amount of such judgment upon either of the defendants.
(Art. 50, § 9.)

h. *To Another County—Clerk May Issue.*

1. No Return of *Nulla Bona* Necessary.

The clerk may issue an execution on judgment or decree at any time after the rendition thereof, directed to the sheriff of another county, whether the return of *nulla bona* to a writ of execution issued to the sheriff of a county wherein the said judgment was rendered has been made or not.

2. Returnable to Court for County to Which Sent.

A writ of execution so issued and directed to the sheriff of another county shall be made returnable to the court for the county to which it may be sent; and if sent to the City of Baltimore, the writ shall be returnable to the Superior Court of Baltimore City.

3. Copy of Docket Entries to Be Sent.

The clerk issuing the writ of execution shall send therewith to the clerk to which the writ shall be returnable a copy of the docket entries in the action, upon which the court may proceed on said execution by renewal or otherwise, in the same manner as if said execution had issued on a judgment rendered in said court.

4. Attachment Regarded as Execution.

An attachment on judgment or decree shall be regarded as an execution within the meaning of this section.

5. Proviso—No Lien until Docket Entries Entered by Clerk of New Court.

Provided, that a judgment shall not be a lien upon real estate situated in another county from that wherein the judgment was obtained, except from the date of entry of the copy of the docket entries by the clerk of the court to which said writ shall be returnable.
(Art. 17, § 11, W.B. 20b.)

i. *Docket Entries—By Clerk.*

1. Satisfaction.

The clerk shall transcribe and enter the docket entries of every execution which shall be entered satisfied or otherwise finally settled.

2. Of Execution on Personal Property.

The clerk shall enter and transcribe the docket entries of every execution or other final process under which any personal property shall have been seized or taken, together with a copy of the schedule accompanying such execution, and the sheriff's return thereon, regularly paged and indexed as provided in section a of Rule 719 (Recording of Judgment).
(Art. 17, § 34.)

Rule 723. Attachment on Judgment .....Gen'l.

a. *Requirements—Clause of Scire Facias.*

A plaintiff having a judgment may, instead of any other execution, issue an attachment against the lands, tenements, goods, chattels and credits of the defendant in the plaintiff's own hands, or in the hands of any other person, which attachment shall contain the clause of *scire facias* required in an attachment against a nonresident or absconding debtor as provided by statute or these Rules.
(Art. 9, § 29, W.B. 653a.)

b. *Judgment in Equity—Jury Trial.*

Where an attachment shall be issued upon a judgment in equity, the court may hear and determine any question that may arise upon such attachment as fully

as the same could be heard and determined by a court of law, subject to the right of appeal to the Court of Appeals as in other cases. If a party to such attachment shall pray a jury trial at any time before such attachment case shall be determined by the court of equity, such attachment proceedings shall be transmitted to a court of law, to be tried as in cases of attachment on judgment.
(Art. 9, § 29, W.B. 653b.)

c. *Condemnation—Execution.*
If either the defendant or the garnishee, in whose hands such property or credits were attached, shall not appear within the time allowed for the filing of a defense under section c of Rule 307 (Time for Original Defense) and show sufficient cause to the contrary, the court shall condemn the said property and credits so attached, as provided by statute or these Rules, and award execution thereof.
(Art. 9, § 30, W.B. 653c; Proposed.)

Rule 724. Renewal of Judgment .....Gen'l.

a. *Scire Facias within 12 Years.*
At any time before the expiration of twelve years from the date of a judgment the plaintiff shall have the right to have a writ of *scire facias* issued to renew or revive the same. On a judgment of a justice of the peace recorded with the clerk, such writ may be issued out of the court, as if said judgment had been originally rendered by the court.
(Art. 26, § 21, W.B. 722f.)

Committee note.—The writ of scire facias may be used in the case of the death or marriage of the defendant.

Rule 725. Revisory Power of Court over Final Judgment .....Gen'l.

For a period of thirty days after the entry of a judgment, order or decree, final in its nature, or thereafter pursuant to motion filed within such period, the court shall have revisory power and control over such judgment. After the expiration of such period the court shall have revisory power and control over such judgment, only in case of fraud, mistake or irregularity.
(G.R.P.P. Pt. Two, VI, Rule 1(4877).)

Rule 727. Proceeding in Aid of Execution .....Gen'l.

In aid of the judgment or execution, the judgment creditor, or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, either in the manner provided by Rule 760 (Supplementary Proceedings), or as provided in the Rules relating to Depositions, Rules 401 and 403 to 415 inclusive, and Discovery, Rules 416 to 419, inclusive, and Rule 422.
(Proposed.)

Committee note. — See the last sentence of F. R. C. P., Rule 69 (a). This Rule is proposed as a result of the decision in Colson Co. v. Goff, 204 Md. 160.

LAW

Rule 741. Judgment at Law .....Law

The court shall give judgment according as the very right of the cause and matter in law shall appear to them, without regarding any matters of mere form, so long as sufficient matter shall appear in the proceedings, upon which the court shall proceed to give judgment, and it shall appear that the action has been commenced after the cause thereof did accrue.
(Art. 26, § 15.)

Rule 742. Interest on Judgment .....Law

A judgment by confession or by default shall be so entered as to carry interest from the time the judgment was rendered. A judgment on verdict shall be so entered as to carry interest from the date on which the verdict was rendered.
(Art. 26, § 17.)

Rule 745. Judgment by Confession .....Law

a. *Entry—Affidavit.*

Judgment by confession may be entered by the clerk upon the filing by the plaintiff of a declaration accompanied by a written instrument authorizing the confession of judgment and entitling the plaintiff to a claim for liquidated damages and supported by an affidavit made by the plaintiff or someone on his behalf stating the amount due thereunder, and indicating the post office address (including street address if needed to effect mail delivery) of the defendant.
(G.R.P.P. Pt. Three, II, Rule 1a(4878).)

b. *Personal Summons.*

Immediately upon entering any such judgment the clerk shall issue a summons for the defendant notifying him of the entry of the judgment and requiring him to appear in the cause wherein it is entered within thirty days after the service upon him of the summons and show cause, if any he has, why the judgment should be vacated, opened or modified. The summons shall be made returnable at the return day after its issuance, or if the plaintiff so directs, at the second return day after its issuance. When returned non est, the summons may be reissued at the request of the plaintiff. Any application made by the defendant with respect to the judgment within thirty days from the service of the summons shall be promptly heard by the court, and such action taken as justice may require. If the judgment is opened or set aside, the case shall stand for trial in accordance with the rules of the court. If no cause is shown in pursuance of the summons, the judgment shall be deemed to be final, to the same extent as a judgment entered after trial, but may be set aside or modified on the ground of fraud or mistake.
(G.R.P.P Pt. Three, II, Rule 1b(4878).)

c. *Nonresident Defendant.*

If the affidavit filed in the proceedings shows that the defendant is not a resident of Maryland, the clerk shall send by registered mail to such defendant at his address indicated in the affidavit a summons similar to that prescribed in section (b) and it shall be the duty of the defendant to respond to such summons within thirty days after the receipt thereof; or the plaintiff may, if he so elects, provide for the personal service of the summons upon the defendant, wherever he may be found, and file in the proceedings an affidavit showing the time and place of such service. Such personal service shall have the same effect as if the defendant had been summoned in the manner prescribed in section (b).
(G.R.P.P. Pt. Three, II, Rule 1c(4878).)

d. *When Service Is Not Effected.*

When the summons issued under section (b) is returned non est, or the registered letter sent under section (c) is returned undelivered, the court shall, upon petition of the plaintiff, provide for notice to the defendant through process by publication pursuant to Rule 105 (Process by Publication), posting a copy of the summons at the courthouse door, or otherwise.
(G.R.P.P. Pt. Three, II, Rule 1d(4878).)

e. *Address Unknown.*

Where the affidavit indicates that the address of the defendant is unknown, a judgment shall not be entered except upon order of court, and the court shall provide for notice to the defendant through process by publication pursuant to Rule

105 (Process by Publication), posting of a copy of the summons at the courthouse door, or otherwise.
(G.R.P.P. Pt. Three, II, Rule 1e(4878).)

f. *Extension of Time.*
The court may, for good cause shown, extend the time for responding to any summons or notice issued in pursuance to this Rule.
(G.R.P.P. Pt. Three, II, Rule 1f(4879).)

g. *Other Cases.*
Except as authorized by this Rule, judgment by confession shall be entered only upon order of court, after such notice and upon such terms as the court may direct.
(G.R.P.P. Pt. Three, II, Rule 1g(4879).)

Rule 748. Inquisition—After Interlocutory or Default Judgment..Law

a. *Inquisition—Jury or Court—Ascertainment of Damages.*
Where an interlocutory judgment or judgment by default has been entered, the court shall, on motion of the plaintiff, make an order in the nature of a writ of inquiry, to charge the jury to inquire of the damages and costs sustained by the plaintiff, which inquiry shall be made and the evidence given in open court as in other jury trials; and after the jury shall have considered thereof, they shall return their inquisition under their hands and seals and the court shall order such judgment to be extended in accordance with the terms of such finding of the jury; or, on motion by the plaintiff, the court where such judgment is, shall without the jury, inquire of the damages and costs sustained by the plaintiff in such action, and shall assess the damages and costs and order the judgment to be extended for the amount so found to be due, and interest.
(Art. 75, § 94.)

Rule 751. Setting Aside Judgment—Not for Technicality or Demurrable Matter .....Law

A judgment shall not be arrested or set aside for any omission of mere matter of form, or because count in the declaration may be bad, if there be one count sufficient in substance or for any other matter or cause which might have been subject of general demurrer to the declaration or other pleading.
(Art. 75, § 11.)

Cross reference.—See Rule 345 (Demurrer).

Rule 753. Verdict below Jurisdictional Amount—Non Pros—Proceedings in Lower Court .....Law

Where, by reason of the verdict of a jury being below the jurisdiction of the court, a judgment of non pros is entered, the record of such judgment shall be a bar to any action founded upon the same cause of action in any court, the limit of whose jurisdiction shall be greater than the amount of such verdict; but the amount of such verdict, less such costs as may be adjudged against the plaintiff, shall be a debt from the defendant to the plaintiff, recoverable in any court that may have jurisdiction to that amount, or before a justice of the peace, as the case may be. A short copy of the verdict and judgment, with the legally taxed bill of costs shall be conclusive evidence of the balance so recoverable.
(Art. 26, § 18.)

Rule 755. Possession—Writ of .....Law

a. *Application.*
This Rule shall apply where lands or tenements shall be sold by any sheriff,

or constable, by virtue of process or execution from a court or justice of the peace, or by a trustee under the decree of a court, or by a trustee by appointment of an insolvent court, or by a trustee under any voluntary deed of trust, or by a mortgagee under any power in a mortgage, or by an executor or any other person under a power in a will.
(Art. 75, § 99.)

b. *Writ to Be against Privies of Debtors, etc.*

If the debtor named in such execution or decree, his widow or heirs who are parties to the proceedings in which such execution was issued or such decree passed, the insolvent grantor or mortgagor in said deed of trust or mortgage, or any person holding under said debtor, insolvent grantor or mortgagor by title subsequent to the judgment, decree, insolvent proceedings, deed of trust or mortgage, or any person claiming under the devisor of will, shall be in actual possession of the lands and tenements sold and shall fail to deliver possession thereof to the purchaser, the court for the county in which said lands or tenements may be situate, shall, on application in writing, verified by the purchaser, unless good cause to the contrary be shown by the party in actual possession, or other persons concerned, within not less than fifteen days nor more than thirty days from the filing of such application, issue a writ of possession reciting the proceedings which may have been had and commanding the sheriff to deliver possession of the said lands or tenements to the purchaser.
(Art. 75, § 99.)

c. *Sale under Will.*

Where a sale has been made by virtue of a power contained in a will, the court shall not grant such writ to dispossess a person holding under a tenancy created in the lifetime of the devisor unless the tenancy has expired.

d. *Tenancy Created by Purchaser.*

Where the purchaser has entered into an agreement with the person in actual possession of such lands and tenements at the time of such sale to permit such person to remain in possession for a limited period, the court shall not grant the writ unless the period limited by such agreement has expired.
(Art. 75, § 99.)

Cross reference.—See article 75, § 99, for penalty for re-entry after eviction. See, also, article 75, §§ 100, 101, for powers of the sheriff or elisor in the execution of the writ of possession.

e. *Sale on Judgment of Justice of the Peace.*

Sections a to d of this Rule shall apply to a sale made by a sheriff, upon an execution issued by the clerk upon a judgment rendered by a justice of the peace, and duly recorded, and the writ of possession may be issued by the court to which the proceeding as to such sale shall be returned, as if the execution under which such sale was made had issued from such court on a judgment therein recovered.
(Art. 75, § 102.)

f. *Death of Purchaser—Rights to Devolve.*

An application for a writ of possession shall not abate by reason of death of the purchaser before obtaining possession of the lands and tenements, but his heir or devisee shall have all the rights and remedies given to the purchaser.
(Art. 75, § 103.)

Rule 760. Supplementary Proceedings .....Law

a. *Judgment Debtor Concealing Assets—Examination—Procedure.*

1. When Examination May Be Had.

At any time within which an attachment or execution might issue upon judgment, or a recorded lien of the State of Maryland or the United States of America,

upon satisfactory proof being made to the court by affidavit or otherwise by the creditor that it is probable that the debtor has property or credits which would be liable to said attachment or execution and that the said debtor is concealing or has concealed or disposed of the same with intent to evade the effect of said judgment, or recorded lien, or at any time after the expiration of sixty (60) days from the entry of any final judgment or recorded lien where said judgment has not been paid or satisfied, the court wherein such judgment was rendered or wherein said lien was recorded shall issue an order requiring said debtor to attend and be examined concerning said property or credits at a time and place specified in said order.

2. Before Whom Examined—Adjournment—Further Order.

The examination shall be either in open court or before a standing commissioner or examiner as directed in the order requiring said examination, and the court, commissioner or examiner may adjourn the proceedings under such order from time to time as he may think proper, and at any stage of the proceedings the court may in its discretion make a further order that any other examination or testimony be taken by a commissioner or examiner designated therein.

3. How Order to Be Served.

The order requiring the said debtor to attend and be examined shall be served upon the defendant by the sheriff where the defendant resides or has his place of business or by notice issued by the clerk and served on the defendant by registered mail, such registered letter to be served on the addressee only.
(Art. 75, § 148.)

b. *Examination of Other Persons.*

If it shall appear upon proof, by affidavit or otherwise to the satisfaction of the court, commissioner or examiner that a person has property of the judgment debtor or is indebted to him in a sum of money, or has knowledge or information tending to prove any concealment or fraudulent transfer or withholding of any assets belonging to the judgment debtor, the judgment creditor shall be entitled to an order requiring such person to attend and be examined as provided in section a of this Rule.
(Art. 75, § 149.)

c. *Examination—No Privilege against Self-Incrimination of Fraud—Answer Not to Be Used in Criminal Proceeding.*

Upon an examination of a judgment debtor or other person under section a or section b of this Rule such person shall testify under oath, and shall not be excused from answering any questions on the ground that such examination will tend to connect him with the commission of fraud. His answers shall not be used as evidence against such person in any criminal proceeding based upon such fraud. It shall be within the discretion of the court, examiner or commissioner to examine any of the witnesses, with the exception of the judgment debtor, out of the presence of one another.
(Art. 75, § 150.)

d. *Injunction, etc.—Third Person to Be Heard.*

Under sections a, b and c of this Rule the court shall grant relief unto said judgment creditor by an order in the nature of injunction, decree for specific performance, writ of mandamus, or for the appointment of a receiver, and shall pass such order as will subject the property or credits of judgment debtor, either in his own hands or in the hands of any person to the operation of the judgment, provided that a copy of such order or decree shall be served upon judgment debtor, or other person giving him proper opportunity to be heard by the court passing such order or decree. In the event that the judgment debtor, or other person, having been duly served, fails to answer or appear by the date provided in such order

or decree, or if said judgment debtor, or other person shall be twice returned non est, such order or decree shall become final.
(Art. 75, § 151.)

e. *Punishment for Disobedience—Contempt.*
A person who refuses or without sufficient excuse neglects to obey an order of the court made pursuant to this Rule and duly served upon him, or an oral direction given directly to him in open court in the course of the proceedings therein provided, or to attend before the court or before a commissioner or examiner according to the command of a summons duly served upon him by the sheriff or by registered mail, or to answer any lawful question propounded to him by such court, commissioner or examiner, may be punished by the court by which such order or summons was issued for contempt.
(Art. 75, § 152.)

f. *Applicable to Judgment of Justice, etc.*
This Rule shall apply to a judgment rendered by a justice of the peace, trial magistrate, and People's Court of any county, provided the said judgment shall have been recorded in the court of the county where the same shall have been rendered, and said court shall have jurisdiction to carry out the provisions of this Rule.
(Art. 75, § 153.)

EQUITY

Rule 771. Final Decree .....Equity

a. *Enrolled after 30 Days.*
A final decree, and order in the nature of a final decree, shall be considered as enrolled from and after the expiration of thirty days from the date of the same.
(G.E. 48(4849); art. 16, § 218.)

b. *Submission for Decree at Any Time.*
Where an action is ready for hearing, and the parties shall sign an agreement and file it with the clerk that the case be submitted for decision to the court where the action is pending, the court may pass a decree, which shall have the same effect as if passed at the regular term of the court.
(Art. 16, § 109.)

Rule 775. Decree Pro Confesso .....Equity

a. *Interlocutory and Final Decree—Setting Aside—Answer.*

1. Final Decree 30 Days after Entry of Decree Pro Confesso.
Where a bill is taken *pro confesso,* a final decree may be entered at any time after the expiration of thirty days from the entry of the order of *pro confesso,* if an answer or other defense is not interposed, and the allegations of the bill or petition present a proper case for relief.

2. Court May Order Bill Supported.
The court may, in all such cases, order that the allegations of the bill or petition, or any of them, be supported by affidavit or deposition.

3. Answer—When May Be Filed.
At any time after the passage of an interlocutory decree, and within thirty days from the date on which a decree *pro confesso* shall have been entered, and before final decree, upon motion or upon its own initiative, the court may set aside the decree, and permit the filing of an answer or the interposing of other defense.

4. Conditions on Granting of Motion.
Such motion shall be granted only upon payment of the costs of the plaintiff up to that time, unless the court by its order shall relieve the defendant of the pay-

ment of such costs upon such terms as the court shall prescribe for the purpose of avoiding expense or delay, and as justice may require.

5. Answer Not to Affect Validity of Prior Testimony.

The filing of such answer shall not affect the validity of any testimony previously taken.

(G.E. 16(4841); art. 16, §§ 181, 184, W.B. 765a, c, e.)

b. *Private Knowledge of Defendant—Proof—Ordered to Be Taken Pro Confesso—Final Decree.*

Where a bill shall sufficiently charge any matter as being within the private knowledge of the defendant and shall pray a discovery, on oath, as to such matter and an interlocutory decree shall have been entered, and the plaintiff shall satisfy the court, by affidavit, to be taken in open court and filed in the cause, that such matter does rest in the private knowledge of the defendant, and that there is reasonable ground for believing, prima facie, that such matter does exist, the said court is authorized and shall order the bill as to such matter to be taken pro confesso, and proceed to make a final decree in the case, in the same manner as if such matter had been proved or admitted by answer.

(Art. 16, § 182.)

c. *No Decree Pro Confesso against a Person under Disability.*

A decree *pro confesso* shall not be passed against a person under disability, but such person under disability shall be proceeded against according to Rule 275 (Capacity—Representative), and any other provisions of these Rules relating specially to a person under disability.

(Art. 16, § 236, W.B. 765f; 1st Dr. 765e.)

Rule 781. Amendment—Correction of Errors .....Equity

Clerical mistakes in a decree or decretal order, or errors arising from any accidental slip or omission, may at any time be corrected by order of court upon petition, without a rehearing.

(G.E. 49(4849); art. 16, § 219.)

Rule 782. Bill of Review—Exceptions .....Equity

a. *By Nonresident—Within 12 Months.*

Where a decree has been passed for the specific execution of any contract or agreement for the sale or conveyance of real or personal estate, or any interest therein against a nonresident defendant, without his having answered, such nonresident may file a bill of review at any time within twelve months after the date of the decree.

b. *Infants.*

If such nonresident be an infant, he may file a bill of review at any time within twelve months after he arrives at age; or if such infant dies under age, his heir or other representative may file a bill of review at any time within twelve months after the death of such infant.

c. *Incompetent.*

If such nonresident defendant be *non compos mentis,* he may file a bill of review at any time within twelve months after he becomes of sane mind, or his heir or other representative may do so at any time within twelve months after the death of such *non compos mentis.*

d. *Exceptions.*

This section shall not apply to any decree to foreclose a mortgage, or for sale of the mortgaged premises, or to a decree for the sale of real or personal property to pay debts or lien, or to a decree for the partition of any real or personal

property, or to a decree for the sale of any real or personal property for the purpose of division.
(Art. 16, § 151.)

Rule 785. Enforcement of Decree and Order .....Equity

a. *Attachment—Sequestration—Fieri Facias—Injunction.*
The court may, for the purpose of executing a decree, or to compel the defendant to perform and fulfill the same, issue attachment of contempt, attachment with proclamations and sequestration against the defendant, and may order an immediate sequestration of the real and personal estate and effects of the defendant, or such parts thereof as may be necessary to satisfy the decree and clear the contempt, or may issue a *fieri facias* against the lands and tenements, goods and chattels of the defendant, to satisfy the said decree, or may issue an attachment by way of execution against the lands, tenements, goods, chattels and credits of the defendant, to satisfy the said decree; or the court may cause, by injunction, the possession of the estate and effects whereof the possession or a sale is decreed, to be delivered to the plaintiff, or otherwise, according to the import of such decree, and as justice may require.
(Art. 16, § 222.)

b. *Sequestration.*
In case of sequestration, the court shall order payment and satisfaction to be made out of the estate and effects so sequestered, according to the true intent and meaning of the decree.
(Art. 16, § 222.)

c. *Contempt—Commitment—Sequestration.*
Where defendant shall be arrested and brought into court upon any process of contempt issued to compel the performance of any decree, the court may, upon motion, order such defendant to stand committed, or may order his estate and effects to be sequestrated, and payment made or possession of his estate and effects to be delivered by injunction until such decree or order shall be fully performed and executed, according to true meaning thereof, and the contempt cleared.
(Art. 16, § 222.)

d. *Several Writs—Lien—Costs.*
Upon a decree, order and for costs adjudged, a party shall have the right to order as many writs of different kinds, for the enforcement of the same, and to one or as many counties as he shall see fit. When issued to a county other than that in which the case shall be, the writ shall be sent by the clerk, with a short copy of the decree or order and docket entries, and a statement of the costs, to the clerk of the court of the county to which issued, and there docketed, and shall be a lien on lands only from the time it is so docketed, and may be there from time to time renewed, as now in common law cases, by the issue of the like or other writs. The court in which such case originated may order that the party directing a writ vexatiously or unnecessarily shall pay the cost.
(Art. 16, § 224, W.B. 722i; 1st Dr. 775f.)

e. *Delivery of Chattels—As at Common Law.*
An order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin, as well as those used for its enforcement in equity.
(Art. 16, § 225, W.B. 722j; 1st Dr. 775g.)

f. *Orders—As Judgment.*
All orders may be enforced by such process as might be had upon a judgment

to the like effect; and the payment of costs adjudged to any party, or to any officer of any court, may be enforced in like manner, without special or further order for their payment.
(Art. 16, § 223, W.B. 722c; 1st Dr. 775h.)

Cross reference.—See section b of Rule 722 (Execution).

Rule 786. Enforcement of Process, Rules and Orders—By Contempt .....Equity

Where a person shall be in contempt for disobedience, nonperformance or nonobservance of any process, rule or order of a court, or for any matter, whereby a contempt may be incurred, such person shall, for every such contempt, and before he shall be released or discharged from the same, pay to the clerk of the court (to be paid by him at the end of every six months to the treasurer, for the use of the State), a sum not exceeding twenty dollars, as a fine for the purgation of every such contempt. The person being in court upon any process of contempt or otherwise, upon the order of the court, shall stand committed and remain in close custody until the said process, rule or order shall be fully performed, obeyed and fulfilled, and until the said fine for such contempt, and the costs, shall be fully paid.
(Art. 16, § 205, W.B. 170a.)

Rule 790. Rehearing .....Equity

A petition for rehearing shall contain the special matter on which such hearing is applied for, and shall be signed by the petitioner, and the facts therein stated, if not apparent on the record, shall be verified by the party, or by some other person. A rehearing shall not be granted after the enrollment of the decree or decretal order; and if the decree or order has been executed, a party who has acted on the faith of such decree or order shall not be prejudiced by such decree or order being reversed or varied.
(G.E. 50(4849); art. 16, § 220, W.B. 565.)

Mr. Frederick W. Invernizzi
6th Floor, Courthouse Building
Baltimore, Maryland

I am submitting the following suggestion with respect to Chapter ..... Rule ..... appearing on Page ..... of the June, 1955, tentative draft of Maryland Rules of Procedure.

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(Signature)

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(Address)

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