

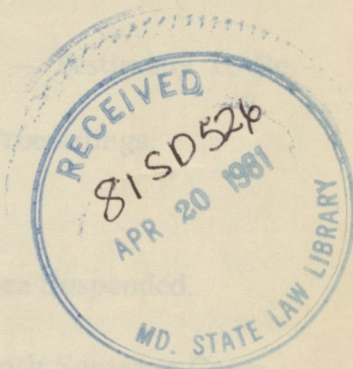
CR
KFM
1729
.A25
1955

CR
KFM
1729
.A25
1955

SUPPLEMENT TO TENTATIVE DRAFT CHAPTER 800 — APPEALS

OF MARYLAND RULES OF PROCEDURE

TENTATIVE DRAFT OF A BILL TO REVISE,
REPEAL AND RE-ENACT
ARTICLE 5
AND CERTAIN SECTIONS OF
ARTICLES 26, 36 AND 93



Prepared by
COURT OF APPEALS STANDING COMMITTEE ON
RULES OF PRACTICE AND PROCEDURE

October, 1955

ARTICLE 5

APPEALS

Appeals To Court Of Appeals

Appeals From Courts Of Law.

1. Appeals From Final Judgment.
2. Appeals From Decisions Of Law Court On Issues From Orphans' And Equity Courts.
3. In Insolvency Cases.
4. Certificate Of Lower Court In Insolvency Cases.
5. Appeals In Cases Involving Title To Public Office.
6. Certiorari To Secure Uniformity Of Decision.

Appeals From Courts Of Equity.

7. Appeals From Final Decrees And Orders.
8. Appeals From Certain Interlocutory Orders.
9. Appeals By Fiduciaries In Certain Cases.

Appeals From Orphans' Courts.

10. Appeals From Judgments.
11. Notice Of Intention To Appeal — Testimony To Be Transcribed.
12. When Appeal Shall Not Stay Proceedings.

Appeals In Criminal Cases.

13. Right Of Appeal By Defendant.
14. Right Of Appeal Where Sentence Suspended.
15. Right Of Appeal By State.
16. Forma Pauperis Appeals In Death Sentence Cases.
17. Technical Errors Not Affecting Substantial Rights.
18. Remand For Sentence — Deduction Of Time Already Served.

Appeals In Contempt Cases.

19. Right Of Appeal.

Appeals In Custody Cases.

20. Right Of Appeal.

Appeals From Commissioner Of Land Office.

21. Right Of Appeal.

General Provisions.

22. Joinder Of Co-Plaintiffs And Co-Defendants Not Required.
23. Costs In Appeals To Which State Or State Agencies Are Parties.
24. Judgments Of Court Of Appeals; When And Where To Be Lien.
25. Issues From Orphans' Court — Appeal To Operate As Stay.

*Appeals To Circuit Courts For Counties
And
Superior Court Of Baltimore City*

Appeals From Orphans' Courts.

26. Right Of Appeal.
27. Manner And Time Of Taking Appeal.

Appeals From County Commissioners.

28. Right Of Appeal.
29. Manner And Time Of Taking Appeal.
30. Jury Trial — Powers Of Circuit Court.

Appeals From Justices Of The Peace.

31. Right To Appeal From Justice And Certain Magistrates; Hearing; Disposition Of Fines, Etc.
32. Personal Representative Of Deceased May Appeal.
33. Justice Must Enter Appeal And Transmit Papers.
34. Appeals To Be Docketed And Appellees Summoned.
35. When Appeal Shall Stand For Trial.
36. Hearing And Decision Of Case.

37. Execution Stayed By Appeal Bond.
38. Bond To Be Filed — When.
39. How Executed In Case Of Death Of Justice.
40. Costs Before Justice To Be Paid Before Trial Of Appeal. This Section Not To Apply To Allegany County Nor Frederick County.
41. Commitment For Non-Payment Of Penalty. Limit Of Imprisonment.
42. Amendments In Discretion Of Court.
43. Continuance And Costs Upon Appeal.

ARTICLE 26

COURTS

General Provisions.

- 4A. Procedure In Contempt Cases.

ARTICLE 36

FEES OF OFFICERS

Clerks Of Courts.

13. Clerk Of Court Of Appeals.

ARTICLE 93

TESTAMENTARY LAW

Orphans' Court.

267. Issues In Such Cases.

[illegible]

the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion. The number of illiterate people in the world is expected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is expected to reach 1.7 billion by the year 2015.

1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 26

1. *What is the purpose of this document?*
 2. *What are the main findings of the study?*
 3. *What are the implications of the findings?*
 4. *What are the limitations of the study?*
 5. *What are the conclusions of the study?*

A BILL ENTITLED

AN ACT to repeal and reenact with amendments Article 5 of the Annotated Code of Public General Laws of Maryland (1951 Edition and 1955 Supplement thereto), title "Appeals and Errors", and all amendments thereto, in order to eliminate therefrom certain provisions which have been or will be superseded by rules adopted by the Court of Appeals of Maryland, to eliminate certain inconsistent provisions, to transfer to other Articles of the Code of Public General Laws certain provisions of Article 5 which do not directly deal with the matter of appeals, to incorporate in said Article 5 certain provisions of other Articles of the Code of Public General Laws which do deal with the matter of appeals, to enlarge the right of appeal from Justices of the Peace and Trial Magistrates in certain cases, and to clarify and modify the statutory provisions dealing with the right of appeal in civil and criminal cases.

SEC. 1. *Be it enacted by the General Assembly of Maryland,* That Sections 1 to 108, inclusive, of Article 5 of the Annotated Code of Public General Laws of Maryland (1951 Edition and 1955 Supplement thereto), title "Appeals and Errors", and all amendments thereto, be and the same are hereby repealed and that 43 new sections be and they are hereby enacted in lieu thereof, to be known as Sections 1 to 43, inclusive, of said Article 5, said new sections to read as follows:

ARTICLE 5 APPEALS

APPEALS TO COURT OF APPEALS

Appeals From Courts Of Law

1. Appeals From Final Judgment.

Any party may appeal to the Court of Appeals from any final judgment or determination of a court of law in any

civil suit or action, including a mandamus action, or in any prosecution for the recovery of any penalty or fine or damages. (Art. 5, Secs. 2, 3).

2. Appeals From Decisions Of Law Court On Issues From Orphans' And Equity Courts.

Any party may appeal to the Court of Appeals from a decision, determination or ruling of a court of law to which issues have been sent from an equity court or an orphans' court to be tried. (Art. 5, Sec. 5).

3. In Insolvency Cases.

Any person interested may appeal to the Court of Appeals from the decision of the lower court on any question decided under Article 47 of the Code of Public General Laws, but the execution or effect of any judgment, decree, decision or order from which such an appeal shall be taken shall not be suspended or stayed unless a bond shall be given in such penalty, with such condition and with such security as the lower court may prescribe and approve. (Art. 47, Sec. 33).

4. Certificate Of Lower Court In Insolvency Cases.

The court from whose judgment or order an appeal is taken under the preceding section of this Article shall immediately upon the entry of the order for appeal certify and state the questions raised in and decided by such court; and no question which shall not appear by such certificate to have been raised in said court shall be considered by the Court of Appeals. (Art. 5, Sec. 9).

5. Appeals In Cases Involving Title To Public Office.

Any party may appeal to the Court of Appeals from a final judgment or order granting or refusing peremptory mandamus in any case involving the title or right to a public office. (Art. 5, Sec. 49).

6. Certiorari To Secure Uniformity Of Decision.

In any case, civil or criminal, in which a final judgment has been rendered by the circuit court of any county or by one of the courts of Baltimore City upon appeal from a Justice of the Peace, if it shall be made to appear to the Court of Appeals upon petition of any party that a review is necessary to secure uniformity of decision, as where the same statute has been construed differently by the courts of two or more circuits, or that there are other special circumstances rendering it desirable and in the public interest that the case should be reviewed, the Court of Appeals shall require, by certiorari or otherwise, any such case to be certified to the Court of Appeals for its review and determination. (Art. 5, Sec. 105).

Appeals From Courts Of Equity

7. Appeals From Final Decrees And Orders.

Any party may appeal to the Court of Appeals from any final decree, or order in the nature of a final decree, entered by a court of equity. (Art. 5, Sec. 30).

8. Appeals From Certain Interlocutory Orders.

Any party may appeal to the Court of Appeals from any of the following interlocutory orders entered by or actions of a court of equity:

- (a) An order granting or dissolving an injunction.
- (b) A refusal to dissolve an injunction.
- (c) A refusal to grant an injunction; and such right of appeal shall not be prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint or petition to be read on the hearing of the application for an injunction.
- (d) An order appointing a receiver.
- (e) An order, remedial in its nature, adjudging in contempt of court any party to a cause or any person

not a party thereto, except orders entered requiring the payment of alimony.

(f) An order for the sale, conveyance or delivery of real or personal property or the payment of money, unless such delivery or payment is directed to be made to a receiver appointed by the court.

(g) An order determining a question of right between the parties and directing an account to be stated on the principle of such determination.

An appeal under this section from an order granting an injunction or from a refusal to dissolve the same or from an order appointing a receiver shall not be entered until the answer of the party appealing has first been filed in the cause. (Art. 5, Secs. 31, 35).

9. Appeals By Fiduciaries In Certain Cases.

Any receiver, trustee, or other fiduciary appointed by or acting under the jurisdiction of a court of equity may appeal to the Court of Appeals from any final decree by which any preference or priority between creditors or other persons interested in the estate is determined, but no such appeal shall be entered without the consent and approval of the court having jurisdiction over the estate. (Art. 5, Sec. 43).

Appeals From Orphans' Courts

10. Appeals from Judgments.

Any party may appeal to the Court of Appeals from any decree, order, decision or judgment of an orphans' court. (Art. 5, Sec. 64).

11. Notice Of Intention To Appeal — Testimony To Be Transcribed.

If a decree, order, decision or judgment of an orphans' court shall have been given or made in a summary proceeding, and on the testimony of witnesses, an appeal to the Court of Appeals shall not be allowed under the pre-

ceding section of this Article unless the party desiring to appeal shall immediately give notice of his intention to appeal and request that the testimony be reduced to writing. In such case the testimony shall be reduced to writing at the cost of the party requesting the same. (Art. 5, Sec. 65).

12. When Appeal Shall Not Stay Proceedings.

An appeal pursuant to section 10 of this Article shall not stay any proceedings in the orphans' court from which the appeal is taken which may with propriety be carried on before the appeal is decided, if the court can provide for the conforming to the decision of the Court of Appeals, whether such decision eventually be for or against the appellant. (Art. 5, Sec. 68).

Appeals In Criminal Cases

13. Right Of Appeal By Defendant.

A defendant in a criminal action may appeal to the Court of Appeals from any conviction or sentence imposed by a circuit court of a county or the Criminal Court of Baltimore City other than a conviction or sentence imposed by a circuit court of a county or the Criminal Court of Baltimore City in the proper exercise of its jurisdiction on appeal from a Trial Magistrate. An appeal under this section shall not stay execution of sentence unless counsel for the defendant so appealing shall make oath that the appeal is not taken for delay. Upon taking such appeal the defendant so appealing shall, in all cases not punishable by death or imprisonment in the penitentiary, be entitled to remain on bail, and in other cases not capital, the court from which the appeal is taken shall have the discretionary power to admit to bail; provided that nothing herein contained shall be construed to prohibit the court from requiring additional or greater bail pending an appeal than such defendant may already have given before conviction. (Art. 5, Sec. 86).

14. Right Of Appeal Where Sentence Suspended.

In all criminal actions where sentence has been suspended by the court the defendant shall have a right to appeal to the Court of Appeals under Section 13 of this Article in the same manner as if sentence or judgment had been entered in said action. (Art. 27, Sec. 725).

15. Right Of Appeal By State.

The State may appeal to the Court of Appeals from a final order or judgment sustaining a demurrer to, or quashing or dismissing any indictment, information, presentment or inquisition in a criminal action, but the State shall have no right of appeal in any criminal action where the defendant has been tried and acquitted. (Proposed — based on existing law.)

See: 4 Md. L. Rev. 303 (1940);

7 Md. L. Rev. 364 (1943);

12 Md. L. Rev. 68 (1951).

16. Forma Pauperis Appeals In Death Sentence Cases.

In a criminal action where a sentence of death is imposed and the defendant files an oath in "forma pauperis" and an order for appeal pursuant to and within the time limited by the Rules of the Court of Appeals, the court imposing such sentence shall sign an order directing the record to be transmitted to the Court of Appeals at the expense of the State. (Art. 5, Sec. 89).

17. Technical Errors Not Affecting Substantial Rights.

In an appeal in a criminal action the Court of Appeals shall give judgment without regard to technical errors, defects or exceptions which do not affect the substantial rights of the parties. (Art. 5, Sec. 88).

18. Remand For Sentence — Deduction Of Time Already Served.

If the Court of Appeals shall remand a criminal action to the lower court in order that such court may pronounce the proper judgment or sentence, the lower court in passing sentence shall deduct from the term of the sentence the time already served by the defendant under the previous sentence from the date of his conviction. (Art. 5, Sec. 87).

Appeals In Contempt Cases

19. Right Of Appeal.

Any person may appeal to the Court of Appeals from any order or judgment passed to preserve the power or to vindicate the dignity of the court and adjudging him in contempt of court. Upon such appeal, in cases of both direct and constructive contempt, the Court of Appeals shall consider and pass upon the law and the facts and shall make such order as to it may seem proper, including the reversal or modification of the order from which the appeal was taken. (Art. 5, Sec. 108).

Appeals In Custody Cases

20. Right Of Appeal.

Any party to the proceedings, aggrieved by an order of any court of this State the effect of which is to deprive any parent, grandparent or natural guardian of the care and custody of a child, may appeal to the Court of Appeals from such order. Upon any such appeal the facts of the case shall be reviewed by the Court of Appeals as in appeals from final decrees entered by courts of equity. (Art. 5, Sec. 31).

Appeals From Commissioner Of The Land Office

21. Right Of Appeal.

Any party may appeal to the Court of Appeals from any judgment, final order or determination made by the Com-

missioner of the Land Office in any case affecting the title to lands. (Art. 5, Sec. 90).

General Provisions

22. Joinder Of Co-Plaintiffs And Co-Defendants Not Required.

An appeal to the Court of Appeals authorized by law may be taken with or without the assent or joinder in such appeal of co-plaintiffs or co-defendants or other parties. (Art. 5, Secs. 2, 30).

23. Costs In Appeals To Which State Or State Agencies Are Parties.

In appeals from executive, administrative or judicial decisions or actions, civil or criminal, of the State of Maryland, its instrumentalities, departments, commissions, agencies, or political subdivisions, costs shall be assessed against the parties by the circuit courts of the counties, the courts of the Supreme Bench of Baltimore City and the Court of Appeals, as in cases between private suitors; and said courts are expressly empowered and directed to assess costs against the State of Maryland, its instrumentalities, departments, commissions, agencies, or political subdivisions whenever costs would be so assessed if the State were a private suitor, said costs to be paid out of the budget of the State, or of the agency or political subdivision of the State concerned. Provided that in all cases of criminal appeals to the Court of Appeals of Maryland which are decided against the State in favor of the appellant, costs shall be assessed against the political subdivision in which the case originated. (Art. 5, Sec. 72A).

24. Judgments Of Court Of Appeals; When And Where To Be Lien.

A judgment or decree of the Court of Appeals shall not be a lien upon real or leasehold estate situated in any county or city other than the county or city from the court

of which the original judgment or decree appealed from was rendered, except from the date of entry of a copy of the docket entries of the judgment or decree of the Court of Appeals by the clerk of the court of such county or city in which the real or leasehold estate is situated. When so recorded such judgment or decree of the Court of Appeals shall be a lien in the same manner and with the same effect as a judgment or decree entered by any other court of the State and recorded in such county or city in which the real or leasehold estate is situated. (Art. 5, Sec. 77).

25. Issues From Orphans' Court — Appeal To Operate As Stay.

An appeal pursuant to Section 2 of this Article from a decision, determination, or ruling of a court of law to which issues have been sent from an orphans' court to be tried shall stay all proceedings in the orphans' court concerning the matter of such issues. (Art. 5, Sec. 5).

**APPEALS TO CIRCUIT COURTS FOR COUNTIES
AND
SUPERIOR COURT OF BALTIMORE CITY**

Appeals From Orphans' Courts

26. Right Of Appeal.

Instead of a direct appeal to the Court of Appeals pursuant to Section 10 of this Article, any party may appeal to the circuit court for the county or to the Superior Court of Baltimore City from any decree, order, decision, or judgment of an orphans' court. Any such appeal shall be heard de novo by said circuit court or Superior Court, as the case may be, and such court shall give judgment according to the equity of the matter. From the final judgment or determination of said circuit court or Superior Court there shall be a further right of appeal to the Court of Appeals pursuant to the provisions of Section 1 of this Article. (Art. 5, Sec. 69).

27. Manner And Time Of Taking Appeal.

An appeal pursuant to Section 26 of this Article shall be taken by filing an order for appeal with the Register of Wills within thirty days after the date of the decree, order, decision or judgment from which the appeal is taken. Within thirty days thereafter the Register of Wills shall transmit a transcript of the proceedings to the court to which such appeal is taken; provided, however, that the orphans' court from which the appeal is taken may for cause shown extend the time for transmitting the transcript of the proceedings. (Proposed).

Appeals From County Commissioners

28. Right Of Appeal.

Any party, or any taxpayer not a party to the proceedings, may appeal to the circuit court for the county from any decision or order of the County Commissioners. All such appeals shall be docketed in the circuit court against the party or petitioner in whose favor the decision of the County Commissioners was made. If upon such an appeal taken by a taxpayer not a party to the proceedings, the appeal is not sustained the appealing taxpayer shall pay the costs of such appeal unless the circuit court shall otherwise direct. (Art. 5, Sec. 92).

29. Manner And Time Of Taking Appeal.

An appeal pursuant to Section 28 of this Article shall be taken by filing an order for appeal with the County Commissioners within thirty days after the date of the decision or order from which the appeal is taken. Within thirty days thereafter the County Commissioners shall transmit a transcript of the proceedings to the court to which such appeal is taken; provided, however, that the circuit court to which such appeal is taken may for cause shown extend the time for transmitting the transcript of the proceedings. (Proposed).

30. Jury Trial — Powers Of Circuit Court.

Upon an appeal pursuant to Section 28 of this Article either party shall have a right to a trial by jury and the circuit court shall ratify, reject, alter or amend the proceedings before the County Commissioners and in said court so as to bring the merits of the case fairly to trial. The circuit court is further authorized to enter such judgment in the case as the County Commissioners ought to have entered, including costs, and such judgment shall be final and may be enforced by due process of law. (Art. 5, Sec. 93).

Appeals From Justices Of The Peace

31. Right To Appeal From Justice And Certain Magistrates; Hearing; Disposition Of Fines, Etc.

Any party may appeal to the circuit court for the county or the Baltimore City Court, as the case may be, from any judgment of a justice of the peace of any county or from any judgment of a trial magistrate in Baltimore City or from any judgment of a magistrate of the Traffic Court of Baltimore City, in any civil, criminal or motor vehicle cause. Such appeal may be taken at any time within thirty days from the date of said judgment if the cause is civil, and within ten days if the cause is criminal or deals with a violation of any motor vehicle law. The court to which such appeal is taken shall hear the case de novo and determine the same according to law and the equity and right of the matter. This section shall be construed to include all actions of debt for the collection of fines, penalties and forfeitures imposed by any law of the State or by any ordinance of any incorporated city or town of the State, and which are made recoverable before a justice of the peace, in which a right of appeal may not be given by the law imposing same; and this section shall also be construed to include all causes of any kind or nature triable before any justice of the peace.

If an appeal is taken from a conviction imposing a fine or other monetary penalty in a criminal case, the trial magistrate shall transmit the fine, costs or other monetary penalty so levied to the clerk of the circuit court to which said appeal is taken. In the event of acquittal or of the levy of a fine (including costs) by the circuit court in a sum less than that levied by the magistrate, the entire fine or the surplus held by the clerk in excess of the fine levied by the circuit court, as the case may be, shall be returned to the defendant. All fines levied by the circuit court hereunder shall be paid by the said clerk to the county commissioners as provided in this section. In the event of a dismissal of an appeal by the defendant before trial in the circuit court, the clerk shall pay the fine, costs, or other monetary penalty so deposited with him to the county commissioners as hereinabove provided.

In the event an appeal is taken from a conviction for a violation of the motor vehicle laws, the trial magistrate shall transmit the fine, costs, or other monetary penalty levied in such case to the clerk of the circuit court to which said appeal is taken. In the event of acquittal or of the levy of a fine (including costs) by the circuit court in a sum less than that levied by the magistrate, the entire fine or the surplus held by the clerk in excess of the fine levied by the circuit court, as the case may be, shall be returned to the defendant. All fines levied by the circuit court for motor vehicle violations shall be paid by the clerk of the circuit court to the Department of Motor Vehicles. In the event of the dismissal of an appeal by the defendant before trial in the circuit court the said clerk shall pay the fine, costs, or other monetary penalty so deposited with him to the Department of Motor Vehicles.

Wherever the words "county commissioners" appear in these sections, they shall be taken to include the mayor and city council of Baltimore City, and wherever the words "circuit court" appear in these sections, they shall

be taken to include the Criminal Court of Baltimore City; wherever the words "justice of the peace" appear they shall include "trial magistrates". (Art. 5, Sec. 94).

32. Personal Representative Of Deceased May Appeal.

If either party die after the rendition of a judgment by a justice of the peace, his executor or administrator may appeal within sixty days after the rendition of the judgment. (Art. 5, Sec. 95).

33. Justice Must Enter Appeal And Transmit Papers.

Upon the party signifying his intention to appeal by application to the justice, it shall be the duty of the justice of the peace to enter the appeal, with the date thereof, upon his docket, and to transmit the papers in the cause, together with a transcript of the docket entries under his hand and seal, to the clerk of the circuit court or the clerk of the Baltimore City Court, and said transcript of the docket entries shall be prima facie proof of the proceedings had and the judgment entered in said cause. (Art. 5, Secs. 1, 96).

34. Appeals To Be Docketed And Appellees Summoned.

An appeal shall be docketed and the summons for the appellee shall be issued by the clerk of the circuit court or Baltimore City Court immediately upon filing the papers in his office, and no petition shall be necessary in any case. (Art. 5, Sec. 97).

35. When Appeal Shall Stand For Trial.

If the summons shall be returned "summoned", the case shall stand for trial de novo, without regard to terms of court, at such date as the parties may agree upon. Where the parties cannot agree, the court shall fix the date for trial thereof; provided always that the court shall have

full control over the assignment of such cases for trial. (Art. 5, Sec. 98).

36. Hearing And Decision Of Case.

If two summonses be returned non est, or one summons be returned served, the court may hear and determine the case by affirming, dismissing or reversing the judgment. (Art. 5, Sec. 99).

37. Execution Stayed By Appeal Bond.

An appeal from a judgment of a justice of the peace shall not stay execution unless an appeal bond in double the sum recovered, with approved and sufficient security, be filed with the justice, with condition that if the party appealing shall not prosecute his appeal at the next circuit court for the county, or the next term of the Baltimore City Court, with effect, and also pay and satisfy the party in whose behalf the judgment of the justice shall be given, his executors, administrators or assigns, in case the said judgment shall be affirmed, as well the debt, damages and costs adjudged by the justice from whose judgment such appeal shall be made, as also all costs and damages that shall be awarded by the court before whom such appeal shall be heard, tried and determined, then the said bond to be and remain in full force and virtue, otherwise to be of no effect. (Art. 5, Sec. 100).

38. Bond To Be Filed — When.

When an appeal bond is filed with sufficient securities, the appeal shall operate as a *supersedeas* to any execution on said judgment, notwithstanding a levy may have been made; provided the said appeal shall be taken and the bond filed within thirty days after judgment, and the party appellant first pays or tenders payment to the officer making such levy, of all legal fees which shall have accrued on said levy. (Art. 5, Sec. 101).

39. How Executed In Case Of Death Of Justice.

If the justice of the peace rendering any judgment from which an appeal is taken goes out of office, by death or otherwise, before an appeal bond has been executed by the party appealing, such appeal bond may be executed before any other justice in the same county or city, and such bond shall have the same effect as if executed before the justice rendering the judgment from which the appeal is taken. (Art. 5, Sec. 102).

40. Costs Before Justice To Be Paid Before Trial Of Appeal. This Section Not To Apply To Allegany County Nor Frederick County.

Before any of the circuit courts of this State or the Baltimore City Court shall proceed to hear or try cases brought to their respective courts by appeal from the judgments of justices of the peace, they shall first be satisfied that all costs incurred on the judgments and proceeding before the justice aforesaid have been paid by the appellant, or that the appellant has given bond, conditioned for the payment of the same, if he does not prosecute his appeal successfully. This section is not to apply to Allegany county, nor to Frederick county; provided, that in Frederick county the appellant shall have given a sufficient bond as provided by Section 37 of this Article. (Article 5, Sec. 103).

41. Commitment For Non-Payment Of Penalty. Limit Of Imprisonment.

Where any judgment of a justice of the peace, imposing any fine or penalty for the violation of any law or ordinance, shall be affirmed upon appeal, the court to which such appeal is taken shall have the power to commit the defendant or appellant in case of non-payment of such fine or penalty and costs; provided, that no person shall be imprisoned under this section for a longer period than thirty days for any one offense. (Art. 5, Sec. 104).

42. Amendments In Discretion Of Court.

All civil actions and civil proceedings, including the writ, summons, docket entries and the names of the parties, on appeal from a justice of the peace before a circuit court for any county or the Baltimore City Court, may be amended so as to bring said action to trial on its merits in the same manner and to the same extent as now allowed in cases originating in courts of law. Amendments in any of the said courts shall be allowed and made in the discretion of said court as if said actions, writs and proceedings had originated therein. (Art. 5, Sec. 106).

43. Continuance And Costs Upon Appeal.

In all cases of amendment of actions and proceedings at law under the preceding section, the allowance of continuances and of costs shall be in the discretion of the court so as to accomplish the ends of justice. (Art. 5, Sec. 107).

SEC. 2. *And be it further enacted*, That a new section be added to Article 26 of the Code of Public General Laws of Maryland (1951 Edition), title "Courts", said new section to be known as Section 4A, to follow immediately after Section 4 of said Article and to read as follows:

ARTICLE 26

4A. Procedure In Contempt Cases.

If any alleged contempt be a direct contempt, alleged to have been committed in the presence of the court, or so near to the court as to interrupt its proceedings, then the court so adjudging shall sign a formal order to that effect. The record in such case shall consist of such order, of affidavits filed by or on behalf of the party adjudged in contempt, and of affidavits filed by the State's Attorney in support of the action of the court, together with any testimony that such party or the State's Attorney may desire to offer in support of such affidavits and a written

statement by the judge or judges passing such order of contempt, of the facts and circumstances under and by reason of which such order was passed. If any such alleged contempt be a constructive contempt, alleged to have been committed not in the presence of the court, or not so near to the court as to interrupt its proceedings, then the court shall issue a citation to the person alleged to be in contempt requiring such person to show cause why an order adjudging such person in contempt should not be passed within a time named therein. If no cause is shown within the time so named, such order shall be final; but if such person shall answer and show cause within the time named, then testimony shall be taken and the matter tried by the court without a jury before a judge or judges other than the judge issuing the citation. If the constructive contempt is committed while all the judges of the Supreme Bench of Baltimore City are sitting *en banc*, or while all the judges of any circuit are sitting *en banc*, the person alleged to be in contempt shall have the right to have the case removed to another circuit or court for trial. In all such cases, it shall be the duty of the State's Attorney, either personally or by deputy or assistant, to prosecute such contempts as though the same were criminal cases. (Art. 5, Sec. 108).

SEC. 3. *And be it further enacted*, That Section 13 of Article 36 of the Code of Public General Laws of Maryland (1951 Edition) title "Fees of Officers", sub-title "Clerks of Court" be and the same is hereby repealed and reenacted to read as follows:

ARTICLE 36

13. Clerk of Courts Of Appeals.

The Clerk of the Court of Appeals of Maryland may charge and shall be entitled to receive the fees hereinafter set forth for the performance of his duties, as follows:

(1) For filing the record in any appeal and all duties incident thereto, \$20.00;

(2) For filing a motion for re-argument and all duties incident thereto, \$20.00;

(3) For a continuance, \$5.00;

(4) For a certificate under seal of the admission of any attorney, \$5.00;

(5) For any copy of a certificate under seal of the admission of any attorney, \$1.00;

(6) For furnishing copies of laws per hundred words, 12½¢;

(7) For rendering any services required or necessarily incident to the duties of the office, and not hereinabove covered, the clerk may make such charges as are reasonable and appropriate;

(8) For furnishing copies of opinions, \$2.00, when ordered in advance, or \$3.00 if ordered thereafter. (Art. 36, Sec. 13).

SEC. 4. *And be it further enacted*, That Section 33 of Article 47 of the Code of Public General Laws of Maryland (1951 Edition), title "Insolvents" be and the same is hereby repealed.

SEC. 5. *And be it further enacted*, That Section 267 of Article 93 of the Code of Public General Laws of Maryland (1951 Edition), title "Testamentary Law", sub-title "Orphans' Court" be and the same is hereby repealed and re-enacted with amendments to read as follows:

ARTICLE 93

267. Issues In Such Cases.

If, upon the answer to any petition or bill filed under the provisions of Sections 265 and 266, either party shall re-

quire it, the court shall cause an issue or issues to be made up and sent to the circuit court for the county, or the Superior Court of Baltimore City, the Court of Common Pleas, or the Baltimore City Court, as the case may be, to be there tried and disposed of as other issues from the orphans' court. (Art. 93, Sec. 267).

SEC. 6. *And be it further enacted*, That Section 338 of Article 93 of the Code of Public General Laws of Maryland (1951 Edition) title "Testamentary Law", sub-title "Widows" be and the same is hereby repealed.

SEC. 7. *And be it further enacted*, That this Act shall take effect June 1st, 1956.

PRESS OF
THE DAILY RECORD COMPANY
BALTIMORE, MD.