

This section having no application, the proceedings should have been stayed. *Offutt v. Gott*, 12 G. & J. 387.

Re stay of proceedings where issues are sent to a court of law, see sec. 5. *Cf.* sec. 33, and notes.

An. Code, sec. 65. 1904, sec. 65. 1888, sec. 63. 1818, ch. 204, sec. 2.

69. If upon an appeal being entered in the orphans' court, the parties shall mutually agree, and enter their assent in writing, to be filed by the register of wills, that the appeal shall be made to the circuit court for the county, or superior court of Baltimore city, the orphans' court shall direct the transcript of the proceedings to be transmitted to the circuit court, or superior court of Baltimore city, whose decision shall be final.

The mutual assent confers jurisdiction under this section; an absolutely full transcript need not be made out, and the original evidence may be made use of. *State v. McCarty*, 64 Md. 260.

An. Code, sec. 66. 1904, sec. 66. 1888, sec. 64. 1836, ch. 289, sec. 1.

70. It shall be the duty of the clerk or register transmitting a record to the court appeals to mark upon the record the amount of the costs taxed against the plaintiff and defendant, respectively, to the time of the appeal.

This section is important and should be invariably observed; the omission of the clerk, however, to note the costs in the record does not affect the right of the party to whom the costs are awarded to collect such costs. *Marshall v. Marshall*, 124 Md. 261.

Costs.

An. Code, sec. 67. 1904, sec. 67. 1888, sec. 65.

71. In appeals from the courts of equity and orphans' courts, the awarding of costs shall be in the discretion of the court of appeals.

This section applied. *Hamilton v. Schwehr*, 34 Md. 117.

Cited but not construed in *Waring v. Edmonds*, 11 Md. 433.

As to costs, see also secs. 14, 16, 30, 46 and 104. As to the payment of costs in cases before justices of the peace, see sec. 101. As to the cost of records and briefs, see sec. 53, *et seq.*, and art. 36, sec. 13.

Where the court of appeals orders a new trial, the lower court has power to stay further proceedings until the costs are paid—art. 75, sec. 74.

An. Code, sec. 67A. 1916, ch. 650.

72. In all appeals from the courts of law and equity as well as the Orphans' Court to the Court of Appeals of Maryland there shall be taxed to those to whom costs may be awarded by the Court of Appeals in any decree, judgment or order in the nature of a judgment or decree such sum or sums as shall have been expended by the party or parties to whom costs are awarded for the stenographic report in the lower court of the proceedings in order to make the record for the appeal to the Court of Appeals.

Appeals in Cases of Forfeiture of Charter.

An. Code, sec. 68. 1904, sec. 68. 1888, sec. 66. Rule 22.

73. The appeal allowed by section 102¹ of Article 23 of the Code of Public General Laws, shall be taken within thirty days from the date of the

¹ The rules of the court of appeals refer to sec. 374 of art. 23, but this evidently was to the Code of 1904, this section being 102 in this edition.