

amend the record is by writ of diminution.<sup>29</sup> It is required that the suggestion for diminution shall contain a specification of the parts of the record necessary to be supplied, or said to be improperly in the record, as was suggested in the case of *Greeff v. Fickey* above cited, upon which the writ issued, and this specification is to be inserted in the writ for the guidance of the inferior Court. The inferior Court is, however, of course not bound by the recital in the writ, and it is its duty to return a correct record of the proceedings in obedience to the writ, if it be necessary, *ibid*; though in ordinary cases only such parts of the record, as have been omitted in the transcript before transmitted, are to be certified anew; and it is further provided by law, that the hearing of a cause shall not be delayed in the Court of Appeals if the return be made in time, Code, Art. 29, secs. 29, 30, 31.<sup>30</sup> And by the 18th rule of the Court of Appeals, no writ of diminution will be granted in any case standing under rule argument, without charging all the costs then accrued to the party applying for the writ, and by the 19th rule, no case is to be postponed or continued on account of diminution alleged in the transcript, unless suggestion be made thereof in writing, by one of the parties or his counsel, supported by affidavit, setting forth the particulars of the diminution, that its correction is necessary to the trial of the merits of the case, that the correction cannot be had without remanding the record, and that the suggestion is not for delaying the argument. By the Act of 1862, ch. 122,<sup>31</sup> the Court of Appeals may also order the production of any original paper, a copy whereof is set forth in the record sent up. In practice this power is extended to all the papers, and in *Greeff v. Fickey* all the original papers were sent up; but as before observed, the Court of Appeals refused to consider the *record* as being before them, in such sort as to authorize them to allow an amendment of it to be made.

Formal mistakes may be amended in the Court of Appeals to save delay under Art. 29, sec. 37<sup>32</sup> of the Code, (1809, ch. 153, sec. 2,) see *Kierstead v. Rogers* and *Kent v. Lyles supra*. So, as before observed, the plaintiff may amend in the Court of Appeals if the verdict be for a larger sum than laid in the declaration, and by the same Act of 1811, ch. 161, sec. 4, Code, Art. 29, sec. 40,<sup>33</sup> if any entry or amendment, which the Court of Appeals may permit, would require an alteration of the judgment, the Court may in deciding the appeal give such judgment as the entry or amendment may require. Amendments under these Acts are however confined to matters of form and do not extend to matters of substance, see

<sup>29</sup> *Bowling v. Turner*, 78 Md. 595. The record may be amended by agreement in any particular which could be accomplished by a writ of diminution, but not so as to present to the Court of Appeals a case which was not before the court below. *P. W. & B. R. Co. v. Shipley*, 72 Md. 88; *Armstrong v. Hagerstown*, 32 Md. 54.

<sup>30</sup> See Code 1911, Art. 5, secs. 46-48. *Schwallenberg v. Jennings*, 43 Md. 554.

<sup>31</sup> Code 1911, Art. 5, sec. 52; *Gordon v. Smith*, 103 Md. 318; *Bowman v. Little*, 101 Md. 316.

<sup>32</sup> Code 1911, Art. 5, sec. 17. See *Anderson v. Stewart*, 108 Md. 340; *Farrell v. Baltimore*, 75 Md. 493.

<sup>33</sup> Code 1911, Art. 5, sec. 20. *Frank v. Morrison*, 55 Md. 399.