execution stayed, unless the party praying an appeal shall, with the prayer for appeal, file an affidavit that the appeal is not taken for delay. It seems always to have been within the power of the Court of Appeals to award interest, and even interest on interest, by way of damages, though it was not done as a matter of course, Contee v. Findley, 1 H. & J. 331, in 1802; Butcher v. Norwood, *ibid*, 485, in 1804, where no interest was awarded by way of damages, and it was held that in an action on the appeal bond interest could be recovered only from the affirmance, but in the same case it was further held, that on an affirmance of a judgment in an action of assault and battery interest might have been awarded as additional damages. And in Nelson v. Bond, 1 Gill, 218, judgment was entered for interest at ten *per cent.* on a note made in Louisiana, that being the legal interest there. The plaintiff below therefore if his judgment is affirmed will always recover interest up to the time of execution.

But costs of records, used in evidence at the trial of an action upon an appeal bond, are not recoverable as part of the plaintiff's claim, and so bearing interest, but are part of the costs of the trial, Jenkins v. Hawes, 28 Md. 547.

258 *As to the rule in the U. S. Courts, see Act of 1789, ch. 20, sec. 23, and the rules of the S. C., Feb. term, 1803 and 1807, and Boyce's Exrs. v. Grundy, 9 Peters, 275; Himely v. Rose, 5 Cranch, 313.[5]

Costs on appeal.—But now Art. 29, sec. 41 [6] of the Code provides that upon the affirmance or reversal of *the judgment of a Court of Law*, the Court of Appeals shall award the party in whose favour they shall decide

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[5] See U. S. Comp. Stats., secs. 1007, 1010; Sup. Ct. Rules, Nos. 23, 24 and 29; *In re* Washington R. R. Co., 140 U. S. 91; Washington R. R. Co. v. Harman, 147 U. S. 571; Gaines v. Rugg, 148 U. S. 228.

[6] This section was repealed and re-enacted by the Act of 1878, ch. 61, which provides that in such cases the Court of Appeals shall award the costs above and below as to said court may seem right and proper and give judgment for the same and may enforce the same by execution. Code 1911, Art. 5, sec. 14; State v. Baltimore, 52 Md. 398.

But it is only where the judgment appealed from "upon the merits of the question between the parties, and not upon the form of the proceeding" is reversed, that the Court of Appeals gives costs to the appellant above and below. So where a suggestion for removal is overruled in the lower court, and the overruling order of the lower court is reversed on appeal, the only costs to which appellant is entitled are those incident to the appeal, not those previously accrued. Price v. Nesbitt, 37 Md. 618.

Where the record is burdened with unnecessary matter, the appellant, even though successful, is frequently made to pay a part of the costs. State v. Malster, 57 Md. 287; Attrill v. Patterson, 58 Md. 226, 261; Roberts v. Roberts, 71 Md. 1, 9; Dumay v. Sanchez, 71 Md. 508; Code 1911, Art. 5, sec. 13.

Where the Court of Appeals finds that the appellant is entitled to nominal damages only, it may, upon reversal of the lower court, award him his costs above and below without awarding a new trial. Crabbs v. Koontz, 69 Md. 59; Lanahan v. Heaver, 79 Md. 413.