

1904, art. 5, sec. 3. 1888, art. 5, sec. 3. 1860, art. 5, sec. 4. 1845, ch. 7.

3. Any party to a writ of mandamus may appeal; and petitions assigning errors may be filed in civil or criminal cases, in lieu of the formal writs of error heretofore issued in this State, in cases where writs of error were formerly allowed.

To warrant an appeal, there must be a final judgment granting the writ of mandamus or dismissing the petition. *Watts v. Port Deposit*, 46 Md. 502.

If the petition assigning error does not show that the matter complained of was passed on by the lower court, the assignment of errors must be quashed. *Ecker v. First National Bank*, 62 Md. 519.

Where the court deems further proceedings proper, a *procedendo* may be awarded in mandamus cases. *Harwood v. Marshall*, 9 Md. 108.

See sec. 44.

*Ibid.* sec. 4. 1888, art. 5, sec. 4. Rule 1.

4. Formal writs of error shall, in all cases, be dispensed with, and the party applying to have the record removed, as upon writ of error, in cases where by law writs of error are allowable, shall, by brief petition, addressed to the court in which the case was tried, plainly designate the points or questions of law by the decision of which he feels aggrieved; which application, so to remove the record, shall be allowed as of right; and no point or question not thus plainly designated in such application shall be heard or determined by the court of appeals.

An assignment of error to the effect merely that a demurrer was sustained, is insufficient; what the assignment should set out, and what matters of fact cannot be made the subject of an assignment of error. *McCaddin v. State*, 100 Md. 670; *State v. Norris*, 70 Md. 91; *State v. Scarborough*, 55 Md. 345.

An assignment of error will be dismissed if the errors assigned are subjects of demurrer, or in arrest of judgment. *Davis v. State*, 39 Md. 385.

This section is not repealed by the act of 1892, ch. 506, and still applies where no exceptions are reserved. *Avrett v. State*, 76 Md. 516; *State v. Floto*, 81 Md. 602.

No point or question not plainly designated can be determined by the court of appeals. *McCaddin v. State*, 100 Md. 670; *Mitchell v. State*, 82 Md. 532; *Hearn v. Gould*, 51 Md. 319. And see *Johns v. State*, 55 Md. 353.

This section complied with. *Gabelein v. Plaenker*, 36 Md. 64.

As to appeals in criminal cases, see also sections 80 and 81.

*Ibid.* sec. 5. 1888, art. 5, sec. 5. 1860, art. 5, sec. 5. 1832, ch. 208.

5. In cases of issues sent from the orphans' court or a court of equity to a court of law to be tried, exceptions may be taken to any opinion given by the court before whom such issues shall be tried, and an appeal may be taken on such exceptions; and such appeal, while pending, shall stay all proceedings in the orphans' court touching the matter of such issues.

This section does not qualify or restrict the powers of a law court; it merely gives a right of exception and appeal as in other cases at law. *Waters v. Waters*, 26 Md. 73. See also *Price v. Taylor*, 21 Md. 366.

The entry of an appeal stays the proceedings in the orphans' court whether that court knows of the appeal or not. An order passed by the orphans' court in ignorance of the appeal, should be at once rescinded. *Berry v. Safe Deposit Co.*, 93 Md. 243.

Cited but not construed in *Goodman v. Wineland*, 61 Md. 455; *Barth v. Rosenfeld*, 36 Md. 615; *Van Ness v. Van Ness*, 6. How. 62.

As to a stay of proceedings in the orphans' court, see sec. 64.

As to issues from the orphans' court, see art. 93, sections 245, 253 and 255.