

Under this section, the appellate court may, without remanding the case, pass a final and effective decree for the payment of money. On the other hand, the appellate court may remand the case with specific directions as to the decree to be passed by the lower court. *Winter v. Gittings*, 102 Md. 467. And see *Young v. Frost*, 1 Md. 394.

Upon remanding the case, the court of appeals does not dispose of the matter of costs, but leaves it to await the final determination of the case; no appeal from the determination of a court of equity on the matter of costs. This section quoted and applied. *Smith v. Shaffer*, 50 Md. 132.

After a decree of the appellate court has been enrolled, an application under this section to vary the decree will not be granted except upon consent, or in respect of matters which are of course. *Williams v. Banks*, 19 Md. 528.

For a case reviewing the authorities on this section and denying an application thereunder filed on the ground that certain facts in the agreed statement upon which the case was tried below, were not true, see *Smith v. Hooper*, 95 Md. 33.

Application under this section, denied. *McGaw v. Gortner*, 96 Md. 493; *Smith v. Hooper*, 95 Md. 33; *Rogers, etc., Co. v. Citizens' Bank*, 93 Md. 618; *Lenderking v. Rosenthal*, 63 Md. 38; *Benscotter v. Green*, 60 Md. 333; *Paine v. France*, 26 Md. 47; *General Ins. Co. v. United States Ins. Co.*, 10 Md. 528; *McElderry v. Shipley*, 2 Md. 37; *Warnick v. Michael*, 11 G. & J. 159.

The last clause of this section applied. *Smith v. Shaffer*, 50 Md. 132; *Eyler v. Crabbs*, 2 Md. 155; *White v. Flannigan*, 1 Md. 539.

Quare, whether this section applies in a case for the sale of an equitable leasehold interest. *Lenderking v. Rosenthal*, 63 Md. 38.

Cited but not construed in *C. & P. Telephone Co. v. Baltimore*, 90 Md. 640; *Crane v. Judik*, 86 Md. 64; *Riley v. First National Bank*, 81 Md. 24; *Amey v. Cockey*, 73 Md. 307; *Postal, etc., Co. v. Snowden*, 68 Md. 121; *Collins v. Foley*, 63 Md. 166; *Dodge v. Stanhope*, 55 Md. 114; *McCahan v. Columbian, etc., Assn.*, 40 Md. 235; *Gregg v. Baltimore*, 14 Md. 507; *Wilson v. Watts*, 9 Md. 454 (dissenting opinion); *Williams v. The Savage Co.*, 3 Md. Ch. 423.

Provisions Relating to Appeals from Courts of Law and Equity.

1904. art. 5, sec. 39. 1888. art. 5, sec. 37. 1860. art. 5, sec. 29. 1713. ch. 4, sec. 4. 1826, ch. 200. 1841. ch. 46, sec. 1. 1845, ch. 132, sec. 1. Rule 15.

39. Upon any appeal being taken in a court of law or equity, or application to take up the record as upon writ of error allowed, the clerk of such court shall make out, and transmit to the court of appeals, a transcript of the record of proceedings, under the seal of his office, in accordance with sections 6, 7, 12, 13, 31, 32, 33, 34 and 35, and within the time therein prescribed; and upon the receipt of such transcript, the clerk of the court of appeals shall enter the case upon his docket as of the term next after the receipt of such transcript.

The only method by which a record can be brought into the court of appeals, is as pointed out by this section and section 49. An agreed statement of facts can not be substituted. *McDevitt v. Bryant*, 104 Md. 190.

This section held to expressly authorize the incorporation in the record of proceedings subsequent to the bill and exhibits, on an appeal from an order granting an injunction. *Blackburn v. Craufurd*, 22 Md. 457.

An appeal held to have been regularly placed upon the docket under this section. *United Rys. Co. v. Corbin*, 109 Md. 54.

Cited but not construed in *Marsh v. Hand*, 35 Md. 126; *Bowie v. Maryland Agricultural College*, 27 Md. 276.

See sec. 2, *et seq.*, and sec. 26, *et seq.*

See notes to sections referred to in this section.

Ibid. sec. 40. 1888. art. 5, sec. 38. 1860. art. 5, sec. 30. 1841. ch. 46, sec. 2. 1842. ch. 288. 1864. ch. 322. 1888. ch. 34. Rule 16.

40. No appeal shall be dismissed because the transcript shall not have been transmitted within the time prescribed, if it shall appear to