

This section has no application to a question of the concealment of a decedent's assets under article 93, sections 243 and 244. Article 93, section 245, provides for an appeal in such cases. *Stonesifer v. Shriver*, 100 Md. 27; *Linthicum v. Polk*, 93 Md. 91; *Hignutt, v. Cranor*, 62 Md. 219; *Abbott v. Goltbart*, 39 Md. 555; *Worthington v. Herron*, 39 Md. 146.

On appeal from the orphans' court, exceptions to the admissibility of evidence, or to the competency of witnesses, may be insisted on in the court of appeals though not taken below. *Dennison v. Dennison*, 35 Md. 381.

Section 9 of this article does not apply to appeals from the orphans' court. *Cover v. Stockdale*, 16 Md. 1.

While the orphans' court is given a discretionary power in certain matters, it cannot exercise that discretion arbitrarily. *Macgill v. McEvoy*, 85 Md. 291.

It has not been the practice to exclude Sundays in computing time under this section. *American Tobacco Co. v. Strickling*, 88 Md. 510.

As to appeals in case of issues sent from the orphans' court to a court of law, see sec. 5.

As to special hearings, see sec. 44.

*Cf.* art. 93, sections 245, 256 and 314.

1904, art. 5, sec. 61. 1888, art. 5, sec. 59. 1860, art. 5, sec. 40. 1798, ch. 101, sub-ch. 15, sec. 18.

**61.** If the decree, order, decision or judgment shall have been given or made on a summary proceeding, and on the testimony of witnesses, the party shall not be allowed to appeal, unless he shall immediately notify his intention and request that the testimony be reduced to writing, and in such case the depositions shall be at the cost of the party in the first instance reduced to writing.

This section applies to summary, and not to plenary, proceedings. *Biddison v. Mosely*, 57 Md. 92; *Stonesifer v. Shriver*, 100 Md. 27.

A person availing himself of this section becomes a party to the record. *Cecil v. Cecil*, 19 Md. 72.

After judgment, it is not permissible to recall the witnesses and have the testimony then reduced to writing as an original proceeding. Distinction drawn between plenary and summary proceedings. *Cannon v. Crook*, 32 Md. 484.

Where testimony is taken on both sides and reduced to writing, it not appearing at whose instance but without objection, this section is sufficiently complied with. *Valentine v. Strong*, 20 Md. 526.

It not appearing what testimony, if any, was taken, the appeal will not be dismissed under this section. *Wrightson v. Tydings*, 94 Md. 361.

Appeal dismissed because this section was not complied with. *Cox v. Chalk*, 57 Md. 571; *Bowling v. Estep*, 56 Md. 566; *Cecil v. Harrington*, 18 Md. 512. And see *Stonesifer v. Shriver*, 100 Md. 27.

*Ibid.* sec. 62. 1888, art. 5, sec. 60. 1860, art. 5, sec. 41. 1798, ch. 101, sub-ch. 2, sec. 11; sub-ch. 15, sec. 18. 1842, ch. 27. Rule 13.

**62.** All appeals allowed from orders or decrees of the orphans' court to the court of appeals shall be taken and entered within thirty days after such order or decree appealed from; and the register of wills shall make out and transmit to the court of appeals, under his hand and the seal of his office, a transcript of the record of proceedings in such case, within thirty days after the appeal prayed; but in such transcript no paper or proceeding, not necessary to the determination of the appeal, shall be incorporated.

An appeal from the judgment of a law court on issues sent from the orphans' court, does not come under the operation of this section. *Hoppe v. Byers*, 60 Md. 395.