

While, if no exceptions are filed or the evidence is not in some proper way objected to at the hearing, a decree may be based on the evidence alone and the defendant cannot upon appeal rely on the inadmissibility of the evidence under the bill, the plaintiff cannot rely on the silence of the defendant for any material allegation as an admission of its truth, but must prove it. Effect of an answer; if insufficient it should be excepted to. *Pennsylvania R. R. Co. v. Minis*, 120 Md. 504.

Claims not mentioned in a bill in equity, even though the plaintiffs did not know of them until informed by the answer and the evidence, will not be passed on, upon appeal, unless the bill was amended. *Minis v. Pennsylvania R. R. Co.*, 120 Md. 513.

Questions as to the sufficiency of the pleadings must be raised by demurrer—article 75, section 91A.

37.

To the second and third notes to this section on page 154 of volume 1 of the Annotated Code, add the case of *Carrington v. Basshor*, 121 Md. 75.

See notes to section 36.

38.

The last sentence of this section complied with by the Court of Appeals; case remanded under this section that further testimony might be taken. *Meinhardt v. Meinhardt*, 117 Md. 429; *Tobin v. Rogers*, 121 Md. 253; *B. & O. R. R. Co. v. Silbereisen*, 121 Md. 421 (continuing an injunction).

Provisions Relating to Appeals from Courts of Law and Equity.

40.

A motion to dismiss an appeal overruled because it was shown that the failure to transmit the record in due time was due in part to the absence of the appellee's counsel from the city. *State v. B. & O. R. R. Co.*, 117 Md. 288.

See notes to section 33.

43.

See article 36, section 12A.

See article 16, section 261B.

49.

See article 36, section 12A.

Appeals from Orphans' Courts.

60.

Notwithstanding article 93, section 237, the action of the orphans' court under that section may be reviewed by the Court of Appeals. *Owen v. Pye*, 115 Md. 406.

The appeal provided by article 93, section 245, is exclusive of the appeal provided by this section. *McAvoy v. Renahan*, 116 Md. 335.

62.

Ordinarily a petition asking that an order admitting a will to probate and granting letters testamentary be revoked should be filed within thirty days from the time when such order comes to the knowledge of the petitioner, or at least some sufficient reason for not doing so must be shown; if, however, fraud is alleged, the petitioner will be given a reasonable time within which to file his petition after discovery of the fraud. Petitioner held to have failed to exercise due diligence. Fraud not established. *Didier v. Carr*, 115 Md. 267.

Cited but not construed in *Houston v. Willcox*, 121 Md. 95.

Costs.

67.

As to the cost of records, see article 36, section 12A.