

36.

Where the contention is that while the plaintiff's proper remedy is in equity, he has been given a decree which is different from the one to which he may be entitled, or that while the bill is adequate to secure the plaintiff's interests, it is an insufficient basis for the particular relief decreed, this section applies, and if the bill was not objected to below, no question as to its sufficiency can arise on appeal. A clause in the answer reserving all lawful objections to errors in the form and substance of the bill, does not meet the requirements of this section. *Equitable Ice Co. v. Moore*, 127 Md. 324.

Where a plaintiff files a petition against administrators *pendente lite* for the appointment of a receiver, an order being passed accordingly, and some six weeks later files a petition asking that the order be rescinded, but then abandons the petition last mentioned and enters an appeal from the order, such appeal is, in view of article 16, section 4, and of this section, premature. *Warfield v. Valentine*, 130 Md. 595.

To the first note to this section on page 143 of volume 3 of the Annotated Code, add *Warfield v. Valentine*, 130 Md. 595.

37.

If no exception on the ground of jurisdiction is made below, the question cannot be considered on appeal. *Equitable Ice Co. v. Moore*, 127 Md. 325.

38.

Where the substantial merits of a case will not be determined by either an affirmance or reversal, it may be remanded for further proof under this section. *Peoples v. Ault*, 125 Md. 698. See also *Peoples v. Ault*, 128 Md. 404.

A case remanded under this section so that the petition may be amended; in case of failure to amend, petition to be dismissed. *Welch v. Colgan*, 126 Md. 15.

A case remanded under this section to give the appellant an opportunity to produce more evidence. *Cacy v. Slay*, 127 Md. 501.

Provisions Relating to Appeals from Courts of Law and Equity.

40.

Appeal dismissed under section 62. The burden is on the appellant to bring the case within this section. The appellant must not only give directions to enter an appeal and transmit the record, but must pay the costs so that the record may be transmitted in time. The clerk may not, however, withhold the making up of the transcript until the costs are paid. *Miller v. Mencken*, 124 Md. 675.

Appellee held not responsible for delay in transmitting record; appeal dismissed under section 6. *Horseman v. Woodward*, 124 Md. 362.

There being no proof to bring the case under this section, an appeal was dismissed under section 6. *Horseman v. Furbush*, 124 Md. 582.

41.

This section applies to registers of wills as well as to clerks. See notes to section 40. *Miller v. Mencken*, 124 Md. 675.

See notes to section 40.

44.

The right to a speedy hearing and decision in the Court of Appeals is specially provided for by this section and by article 33, section 86. An application for a mandamus to compel the board of canvassers to canvass and count the votes, held to involve the right to a certificate of an election to a public office. *Price v. Ashburn*, 122 Md. 519.