

An. Code, sec. 13. 1904, sec. 13. 1888, sec. 12. Rule 7.

15. In making up the transcript of records to be transmitted to the court or appeals, the clerks of the courts below shall omit from such transcripts the formal headings and commencement of the record, stating only the titling of the cause, and the time of the commencement of the suit or proceedings; they shall also omit all writs, or original process for appearance, where the party has appeared; all entries of continuances and imparlances; all entries of motions and rules to declare or plead; all entries of applications for continuances, for commissions, or for warrants of resurvey, and the affidavits in support thereof, together with the rulings of the court on such applications; all entries of motions or rules of security for costs, together with the proceedings and rulings thereon; all entries of empanneling, swearing, and names of jurors, and all other merely incidental motions and rules made in the progress of the cause; all pleadings withdrawn, waived or superseded by amendment; all commissions to take testimony and the formal returns thereto, and all warrants of resurvey, the clerk stating the time of issue and return of such warrant; all *replevin*, *retorno habendo*, and appeal bonds, and affidavits filed on taking appeals; all formal entries of motions for new trials, and the rulings thereon, together with the affidavits and other evidence used on such motions, the clerk stating in lieu thereof, the fact of such motion being made, and how disposed of by the court, unless, where any of the foregoing matters or proceedings may be used as evidence in the cause, or where some question may arise in regard thereto, reviewable by the court of appeals, then, so much only of any such matter or proceedings as may be used in evidence, or as appertain to the decision or determination desired to be reviewed, shall be incorporated in the transcript, and no more; the intent being to avoid incorporating in the transcript any matter or thing not material to the full and fair presentation of the questions to be reviewed by the appellate court.

This section has no application to affidavits filed on appeal in a criminal case, under sec. 86 of this article. *Weir v. State*, 39 Md. 435.

As to the cost of records, see art. 36, sec. 13

An. Code, sec. 14. 1904, sec. 14. 1888, sec. 13. 1785, ch. 80, sec. 6. 1878, ch. 61.

16. Upon the reversal or affirmance of the judgment of a court of law, the court of appeals shall award the costs which may have accrued in the court below, and in the court of appeals, in such manner as to the said court seems right and proper, and shall give judgment for the same, and may enforce such judgment by execution.

It is only where the judgment appealed from is reversed "upon the merits of the question between the parties and not upon the form of proceeding," that the court of appeals awards costs to the appellant both above and below. *Price v. Nesbitt*, 37 Md. 620.

This section applied. *Attrill v. Patterson*, 58 Md. 261; *State v. Malster*, 57 Md. 314; *State v. Baltimore*, 52 Md. 424.

For a case construing the act of 1785, ch. 80, sec. 6, see *Sellers v. Zimmerman*, 21 Md. 356.

As to costs, see also secs. 14, 30, 46, 71 and 104. As to the payment of costs in cases before justices of the peace, see sec. 101.

Where the court of appeals orders a new trial, the lower court has power to stay further proceedings until the costs are paid—art. 75, sec. 74.

As to the cost of records, see art. 36, sec. 13.