

**Time of appeal.**

An appeal must be actually entered within the two months, and the fact that an appeal bond is filed within the two months does not affect the matter. *Humphreys v. Slemmons*, 78 Md. 607. See also *Miller v. Murray*, 71 Md. 62.

Where an appeal from a final order taken in due time brings up a previous order for review in accordance with sec. 32, the appeal need not be taken within two months from the passage of such previous order. *Emory v. Faith*, 113 Md. 256.

In computing the time within which an appeal should be taken, the day of the date of the decree should be excluded. *Calvert v. Williams*, 34 Md. 672.

The time during which a decree is suspended is to be excluded in determining the time within which the appeal must be taken. *Herbert v. Rowles*, 30 Md. 271; *Bennett v. Bennett*, 5 Gill, 467.

The operation of the first clause of this section is not stayed, because the law regulating the time for appeal was not in effect at the time the judgment was entered, provided the appeal was not taken within two months after the law went into effect. *Stephen v. Lewis*, 62 Md. 229.

Where a verdict and judgment regarded by the court as for the plaintiff, were entered in February, 1887, and upon a reversal by the appellate court, judgment is entered in January, 1888, for the defendants, and the plaintiff enters an appeal on the same day, the appeal is taken in time. *Sentman v. Gamble*, 69 Md. 307.

Question whether an order sustaining a demurrer to so much of a petition as attacked the lower court's jurisdiction, was one from which an appeal should have been taken within two months from its date, not passed on. *Bliss v. Bliss*, 133 Md. 68.

Appeal held to have been entered too late. *Stephens v. Lewis*, 62 Md. 230; *Jacobs v. Bealmear*, 41 Md. 487; *Wheeler v. Stone*, 4 Gill, 45; *Strike v. McDonald*, 2 H. & G. 260.

*Cf.* secs. 6 and 66, and notes.

**Fraud or Mistake.**

The affidavit may be made by one or more of the parties, or by persons who are not parties. It need not specify the nature of the fraud or mistake, or go into a proof of it. *Oliver v. Palmer*, 11 G. & J. 143.

How fraud or mistake must be set up; nature of mistake contemplated. *Contee v. Pratt*, 9 Md. 72.

The allegation of fraud has no effect other than to extend the time for taking the appeal. *Ashton v. Ashton*, 35 Md. 501.

The last clause of this section applies only to appeals from courts of equity. *Powhatan, etc., Co. v. Potomac, etc., Co.*, 36 Md. 243.

The last clause of this section, applied. *United, etc., Co. v. Stephens*, 67 Md. 158; *Ashton v. Ashton*, 35 Md. 501; *Johnson v. Robertson*, 31 Md. 485; *Contee v. Pratt*, 9 Md. 72.

For cases now apparently inapplicable by reason of changes in the law, see *Meloy v. Squires*, 42 Md. 382; *Redman v. Chance*, 32 Md. 53; *Edwards v. Bruce*, 8 Md. 394.

As to the extension by fraud of the time within which suit may be entered, see art. 57, sec. 14.

An. Code, sec. 33. 1904, sec. 33. 1888, sec. 31. Rule 10.

37. All transcripts of records, on appeals from courts of equity, shall be made and transmitted to the court of appeals within three months from the time of the appeal prayed; but on appeals taken as provided by section 35 the transcript of the record shall be made and transmitted to the court of appeals forthwith after the appeal prayed.

**Appeal dismissed.**

Appeal dismissed under this section when it appeared that the appellant and appellee, being unable to agree as to what should go in the record, brought the matter to the attention of the judge, who requested the appellant to submit a statement of what he thought should go in the record, which, however, he failed to do. The clerk is under no obligation to forward the record until it is paid for, and this requirement is not met by the appellant telling the clerk that he will pay him