at whose instance the same is inserted, that costs may be awarded, as the matter so directed to be incorporated may be deemed material or not by the court of appeals.

While this and the following section do not refer to a condensation of the *oral* testimony, a synopsis of the testimony and exhibits is approved. Lowes *v.* Carter, 124 Md. 686.

Under this section, if the appellant and appellee agree as to what shall go into the record, the clerk's course is plain; if, however, they differ, the clerk should consult the court, or if the court does not advise him, the clerk should act according to his understanding of the rules of the court of appeals, and state in a certificate to that court why and at whose instance papers were inserted or omitted about which question is raised. When a writ of diminution is proper. Carbon copies of testimony used in making up record. Motion to dismiss appeal overruled. Spedden *v.* Balto. Refrigerating, etc., Co., 117 Md. 447.

This section referred to in construing sec. 37—see notes thereto. Wilmer *v.* Baltimore, 116 Md. 340.

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

Cf. sec. 12, *et seq.*, and see notes thereto. See art. 16, sec. 278, *et seq.*

An. Code, sec. 35. 1904, sec. 35. 1888, sec. 33. Rule 12.

39. Whenever deeds, records or other documentary evidence are used in any equity cause, the purport and substance only of such deeds, records or other instruments shall be stated, and they shall not be set out in full in any case, except where some question arises upon the construction or validity thereof, and transcripts of records in equity causes shall be prepared in accordance with this rule. Any party to the appeal, however, shall have the right to direct any or all of such documentary proof to be inserted at length, the clerk stating at whose instance the same is so inserted, that costs may be awarded as the matter so incorporated may be deemed proper or not, by the court of appeals, to have been set out in full.

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

See art. 16, sec. 278, *et seq.*, and notes to secs. 12 and 38 (this article).

An. Code, sec. 36. 1904, sec. 36. 1888, sec. 34. 1832, ch. 302, sec. 5. 1861, ch. 33.

40. On an appeal from a court of equity, no objection to the competency of a witness, or the admissibility of evidence, or to the sufficiency of the averments of the bill or petition, or to any account stated and reported in said cause, shall be made in the court of appeals, unless it shall appear by the record that such objection was made by exceptions, filed in the court from which such appeal shall have been taken.

Requisites of exceptions.

All this section requires is that the exceptions be sufficiently definite to show the particular witnesses or evidence designed to be excepted to. Young *v.* Mackall, 4 Md. 370; Berrett *v.* Oliver, 7 G. & J. 202.

The exceptions must be filed in due form plainly indicating the witness and evidence objected to, or the specific objections to an auditor's report; the mere noting of an exception by the examiner is not sufficient. Gerting *v.* Wells, 103 Md. 638; Young *v.* Ohmohundro, 69 Md. 428; Grand United Order, etc., *v.* Merklin, 65 Md. 583. And see Cross *v.* Cohen, 3 Gill, 258.

A memorandum filed in the cause, but not signed, objecting to the competency of testimony, is not a sufficient exception. Sindall *v.* Campbell, 7 Gill, 76. And see Cross *v.* Cohen, 3 Gill, 270.

An exception reading, "Subject to all exception on account of the incompetency of the witness," is sufficient, where the agreement for the taking of the testimony