

After a decree of the appellate court has been enrolled, an application under this section to vary the decree will not be granted except upon consent, or in respect of matters which are of course. *Williams v. Banks*, 19 Md. 528.

For a case reviewing the authorities on this section and denying an application thereunder filed on the ground that certain facts in the agreed statement upon which the case was tried below, were not true, see *Smith v. Hooper*, 95 Md. 33.

Application under this section, denied. *McGaw v. Gortner*, 96 Md. 493; *Smith v. Hooper*, 95 Md. 33; *Rogers, etc., Co. v. Citizens' Bank*, 93 Md. 618; *Lenderking v. Rosenthal*, 63 Md. 38; *Benscotter v. Green*, 60 Md. 333; *Paine v. France*, 26 Md. 47; *General Ins. Co. v. United States Ins. Co.*, 10 Md. 528; *McElderry v. Shipley*, 2 Md. 37; *Warnick v. Michael*, 11 G. & J. 159.

The last cause of this section applied. *Meinhardt v. Meinhardt*, 117 Md. 429; *Tobin v. Rogers*, 121 Md. 253; *B. & O. R. R. Co. v. Silberstein*, 121 Md. 421; *Smith v. Shaffer*, 50 Md. 132; *Eyler v. Crabbs*, 2 Md. 155; *White v. Flannigan*, 1 Md. 539.

Quare, whether this section applies in a case for the sale of an equitable leasehold interest. *Lenderking v. Rosenthal*, 63 Md. 38.

Cited but not construed in *C. & P. Telephone Co. v. Baltimore*, 90 Md. 640; *Crane v. Judik*, 86 Md. 64; *Riley v. First National Bank*, 81 Md. 24; *Amey v. Cockey*, 73 Md. 307; *Postal, etc., Co. v. Snowden*, 68 Md. 121; *Collins v. Foley*, 63 Md. 166; *Dodge v. Stanhope*, 55 Md. 114; *McCahan v. Columbian, etc., Assn.*, 40 Md. 235; *Gregg v. Baltimore*, 14 Md. 507; *Wilson v. Watts*, 9 Md. 454 (dissenting opinion); *Williams v. The Savage Co.*, 3 Md. Ch. 423.

Provisions Relating to Appeals from Courts of Law and Equity.

An. Code, sec. 39. 1904, sec. 39. 1888, sec. 37. 1713, ch. 4, sec. 4. 1826, ch. 200. 1841, ch. 46, sec. 1. 1845, ch. 132, sec. 1. Rule 17.

43. Upon any appeal being taken in a court of law or equity, or application to take up the record as upon writ of error allowed, the clerk of such court shall make out, and transmit to the court of appeals, a transcript of the record of proceedings, under the seal of his office, in accordance with sections 6, 8, 14, 15, 35, 36, 37, 38 and 39, and within the time therein prescribed, and upon the receipt of such transcript, the clerk of the court of appeals shall enter the case upon his docket as of the term next after the receipt of such transcript, unless required to be placed upon the docket of the term during which it is received by the rules of this Court or some statute.

The only method by which a record can be brought into the court of appeals, is as pointed out by this section and sec. 53. An agreed statement of facts cannot be substituted. *McDevitt v. Bryant*, 104 Md. 190.

This section held to expressly authorize the incorporation in the record of proceedings subsequent to the bill and exhibits, on an appeal from an order granting an injunction. *Blackburn v. Craufurd*, 22 Md. 457.

An appeal held to have been regularly placed upon the docket under this section. *United Rys. Co. v. Corbin*, 109 Md. 54.

Cited but not construed in *Marsh v. Hand*, 35 Md. 126; *Bowie v. Maryland Agricultural College*, 27 Md. 276.

See sec. 2, *et seq.*, and sec. 30, *et seq.*

See notes to sections referred to in this section.

An. Code, sec. 40. 1904, sec. 40. 1888, sec. 38. 1841, ch. 46, sec. 2. 1842, ch. 288. 1864, ch. 322. 1888, ch. 34. Rule 18.

44. No appeal shall be dismissed because the transcript shall not have been transmitted within the time prescribed, if it shall appear to the court of appeals that such delay was occasioned by the neglect, omission or inability of the clerk or appellee; but such neglect, omission or inability shall not be presumed, but must be shown by the appellant.