

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.

No documentary evidence or exhibits shall be omitted from the transcript and brought to this Court separately, in the originals or copies, for reference in the argument and decision, except with the approval of a member of this Court, or under the authority and direction of statute; but a statement of the contents and effect of such documentary evidence or exhibits may be included in the record by stipulation of the parties. Reproductions of documents by photographic or photostatic process may only be used to exhibit the form or condition of signatures or other matter inscribed or printed on the documents, and only in clear, positive form of black letters or marks upon white ground.<sup>1</sup>

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, 1924, sec. 16. 1912, 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, 47, 71 and 106. As to the payment of costs in cases before justices of the peace, see sec. 102.

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.

An. Code, 1924, sec. 17. 1912, sec. 15. 1904, sec. 15. 1888, sec. 14. 1880, ch. 69.

**17.** On reversing any judgment, or part of a judgment, at law, the court of appeals shall have power to give such judgment as ought to have been given by the court below, and may in all cases enforce their judgment by execution.

Where at the end of the plaintiff's case, the lower court erroneously grants a prayer taking the case from the jury, the court of appeals will not enter final judgment for the plaintiff. When the court of appeals will enter final judgment. *Howard v. Carpenter*, 22 Md. 256.

This section does not authorize the court of appeals to modify a judgment by remitting interest. *Frank v. Morrison*, 55 Md. 409; *Noel Construction Co. v. Armored Concrete Co.*, 120 Md. 256.

<sup>1</sup> As revised by Court of Appeals, Oct. 5, 1933.