

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.

Fact that last day of two months within which appeal may be taken falls on legal holiday, does not extend time; appeal dismissed. *Winkel v. Geiger*, 154 Md. 674.

Date of decree is date upon which it became effective and binding, *i. e.*, when it is filed. *Pocock v. Gladden*, 154 Md. 253.

Cited but not construed in *Wilmer v. Haines*, 148 Md. 388.

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.

When appeal entered after two months from date of decree on ground decree obtained by fraud or mistake, case must be heard and determined on record as of time when decree appealed from was passed and as if appealed within usual period. *Bauer v. Harman*, 161 Md. 131.

An. Code, 1924, sec. 37. 1912, 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 what he regards as the proper cost of the record. Burden of proof—see sec. 44. *Wilmer v. Baltimore*, 116 Md. 339. And see *Horpel v. Hawkins*, 115 Md. 157.

A delay of more than five months in transmitting the record is not a compliance with the last clause of this section. *Wilhs v. Jones*, 57 Md. 365.

For cases in which appeals were dismissed for a failure to comply with this section, the delay not being sufficiently accounted for, see *Duval v. Maryland Rys. Co.*, 114 Md. 298; *Warburton v. Robinson*, 113 Md. 25; *Estep v. Tuck*, 109 Md. 528; *Downes v. Friel*, 57 Md. 532; *Mince v. Tucker*, 37 Md. 363. *Wilmer v. Haines*, 148 Md. 388.

This section referred to in construing ch. 625 of acts 1916 (Baltimore City Charter, sec. 411). *Stiegler v. Eureka Life Ins. Co.*, 146 Md. 655.

Agreement of counsel, and order of trial court cannot extend period allowed for transmission of record. *Sanitary Supply Co. v. Cooper*, 160 Md. 511.

Orders finally disposing of funds in court for distribution are final in their nature and appealable. *Harrison v. Robinette*, 167 Md. 84.

Delay Explained.

Where it appears from the affidavit of the clerk that the transcript was not turned over to the express company for transmission to the court of appeals until twelve days after it was paid for, the appeal will not be dismissed, although the record does not arrive in time; delay of express company. *Bliss v. Bliss*, 133 Md. 68.