

Where the appellant instructs the clerk as to what papers he wishes included in the transcript (which contains about 175 pages) five weeks before the time for the filing expires, and the transcript would have been filed in time if the clerk had not delayed for certain paper suitable for plats and to do other work, the appeal will not be dismissed, although the transcript is not filed within the three months. *Whittington v. Commissioners of Crisfield*, 121 Md. 395.

Where the delay in transmitting the record is equally attributable to the appellee and to the appellant, the appeal will not be dismissed. *Forrest Lake Cemetery v. Baker*, 113 Md. 531; *McGonigal v. Plummer*, 30 Md. 426. *Cf. Duvall v. Maryland Rys. Co.*, 114 Md. 298.

When the trial court has by granting extensions of the time for signing bills of exception, made it impossible to have the transcript prepared within the required time, the court of appeals has allowed such further time as seemed proper. *Duvall v. Maryland Rys. Co.*, 114 Md. 298.

Generally.

Record held to have been transmitted within the time allowed. *Cross v. Hecker*, 75 Md. 575; *B. & O. R. R. Co. v. Gilmor*, 125 Md. 618.

Cf. sections 6 and 66. and notes.

See secs. 45, 46, 91 and 92 and notes to secs. 44 and 45.

An. Code, 1924, sec. 38. 1912, sec. 34. 1904, sec. 34. 1888, sec. 32. Rule 11.

38. In making up the transcript of the record of equity proceedings to be transmitted to the court of appeals, it shall be the duty of the clerk of the court from which the appeal may be taken, to omit therefrom the formal heading and commencement of the record, stating only the titling of the cause and the time of the commencement of the proceedings; he shall also omit all subpoenas and other process for appearance of parties if parties have appeared; all orders and certificates of publication stating in lieu thereof the date of such order; the period of publication required, how published, and the time fixed for appearance of parties thereunder; all commissions to appoint guardians and orders to take testimony, and the formal returns thereto, stating in lieu thereof the fact and time of issuing such commissions, and passing such orders and the time of the return of such testimony; all entries of continuances; all injunction bonds, receivers' bonds, trustees' bonds, appeal bonds, and affidavits filed on appeal; all proceedings in the cause subsequent to the decree or order appealed from; and all merely collateral proceedings not in anywise involved in the matter of appeal, and which cannot be material to the hearing and decision of the case by the court of appeals; any party to the appeal, however, shall have the right to direct any particular part of the proceedings of the cause, that would otherwise be omitted, to be incorporated in the transcript, the clerk stating 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.

If necessary, appellant can incorporate desired papers and transmit the whole without waiting for appellee. *Sanitary Supply Co. v. Cooper*, 160 Md. 511.

This rule plainly violated in record of petitioner in *Hohman v. Orem*, 169 Md. 640.

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. 290, et seq.