

An. Code, 1924, sec. 42A. 1933, ch. 460.

**43.** Any receiver, trustee or other fiduciary appointed by, or acting under the jurisdiction of any of the courts of equity of this State, shall have the right of an appeal to the Court of Appeals from any final decree hereafter entered or heretofore entered, provided the time for appeal from such decree has not expired, by which any preference or priority between creditors or other persons interested in the estate, is determined. Provided, however, that no such appeal shall be prosecuted without the consent and approval of the court having jurisdiction over the estate.

Consent of court must be given before initiation of appeal. *Lindsay v. Stemper*, 166 Md. 260.

### Provisions Relating to Appeals from Courts of Law and Equity.

An. Code, 1924, sec. 43. 1912, 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.

**44.** 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.

A record filed before the beginning of the term brings the case into that term of the court. *Price v. State*, 160 Md. 671.

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

See notes to sec. 12 and to sections referred to in this section.

An. Code, 1924, sec. 44. 1912, sec. 40. 1904, sec. 40. 1888, sec. 38. Rule 18. 1841, ch. 46, sec. 2. 1842, ch. 288. 1864, ch. 322. 1888, ch. 34

**45.** 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.

#### Fault of clerk.

Last clause of this section applied, as affidavit of clerk showed that delay was caused by him. *Williams Realty Co. v. Robey*, 175 Md. 534.

The burden of proof is on the appellant to show the cause of the delay. *Willis v. Jones*, 57 Md. 366.

The last clause of this section applied. The proof that the clerk was at fault must be under oath, and is generally in the form of affidavits; a certificate from the clerk "that the delay has been in no way attributable to the defendant," is not admissible. *Northern Central Ry. Co. v. Rutledge*, 48 Md. 263. See also *Hannon v. State*, 9 Gill, 442.

The last clause of this section applied. The clerk may properly decline to transmit the record until he is paid for it, and he need not notify the appellant when the record is ready for transmission. *Parsons v. Padgett*, 65 Md. 356.