

Where parties refer a matter in dispute to the arbitrament and award of the judges of an orphans' court, providing in the agreement of reference for an appeal to the court of appeals, the latter court will dismiss the appeal, because if the reference was to the judges as a court, no appeal lay under the statute then in force, and if the reference was to the judges as individuals, there was no appeal. The reservation of a right of an appeal in the agreement could not confer jurisdiction on the court of appeals. *Strite v. Reiff*, 55 Md. 94 (decided in 1880).

The appeal provided by art. 93, sec. 254, is exclusive of the appeal provided by this section. *McAvoy v. Renehan*, 116 Md. 335.

Generally.

The term "party" in this section is not used in a technical sense, but means anyone whose interest the decree or order has a direct tendency to affect adversely, such party appearing in court and claiming a right of appeal. *Meyer v. Henderson*, 88 Md. 590; *Gunther v. State*, 31 Md. 33. See also *Lee v. Allen*, 100 Md. 13; *Cecil v. Cecil*, 19 Md. 72; *Hoffar v. Stonestreet*, 6 Md. 304; *Parker v. Gwynn*, 4 Md. 426; *Stevenson v. Schriber*, 9 G. & J. 335.

This section has no application to a question of the concealment of a decedent's assets under art. 93, secs. 252 and 253. Art. 93, sec. 254, provides for an appeal in such cases. *Stonesifer v. Shriver*, 100 Md. 27; *Linthicum v. Polk*, 93 Md. 91; *Hignutt v. Cranor*, 62 Md. 219; *Abbott v. Golibart*, 39 Md. 555; *Worthington v. Herron*, 39 Md. 146.

On appeal from the orphans' court, exceptions to the admissibility of evidence, or to the competency of witnesses, may be insisted on in the court of appeals though not taken below. *Dennison v. Dennison*, 35 Md. 381.

Sec. 10 of this article does not apply to appeals from the orphans' court. *Cover v. Stockdale*, 16 Md. 1.

While the orphans' court is given a discretionary power in certain matters, it cannot exercise that discretion arbitrarily. *Macgill v. McEvoy*, 85 Md. 291.

It has not been the practice to exclude Sundays in computing time under this section. *American Tobacco Co. v. Strickling*, 88 Md. 510.

This section referred to in construing art. 93, secs. 3 and 251—see notes thereto. *Stake v. Stake*, 138 Md. 55.

As to appeals in case of issues sent from the orphans' court to a court of law, see sec. 5.

As to special hearings, see sec. 49.

Cf. art. 93, secs. 254, 266 and 327.

An. Code, 1924, sec. 65. 1912, sec. 61. 1904, sec. 61. 1888, sec. 59. 1798, ch. 101, sub-ch. 15, sec. 18.

65. If the decree, order, decision or judgment shall have been given or made on a summary proceeding, and on the testimony of witnesses, the party shall not be allowed to appeal, unless he shall immediately notify his intention and request that the testimony be reduced to writing, and in such case the depositions shall be at the cost of the party in the first instance reduced to writing.

This section applies to summary, and not to plenary proceedings. *Biddison v. Mosely*, 57 Md. 92; *Stonesifer v. Shriver*, 100 Md. 27.

A person availing himself of this section becomes a party to the record. *Cecil v. Cecil*, 19 Md. 72.

After judgment, it is not permissible to recall the witnesses and have the testimony then reduced to writing as an original proceeding. Distinction drawn between plenary and summary proceedings. *Cannon v. Crook*, 32 Md. 484.

Where testimony is taken on both sides and reduced to writing, it not appearing at whose instance but without objection, this section is sufficiently complied with. *Valentine v. Strong*, 20 Md. 526.

It not appearing what testimony, if any, was taken, the appeal will not be dismissed under this section. *Wrightson v. Tydings*, 94 Md. 361.

Appeal dismissed because this section was not complied with. *Cox v. Chalk*, 57 Md. 571; *Bowling v. Estep*, 56 Md. 566; *Cecil v. Harrington*, 18 Md. 512. And see *Stonesifer v. Shriver*, 100 Md. 27.

This section has no application where petition was dismissed without hearing or opportunity to offer testimony. *Bushong v. Clark*, 168 Md. 660.

Cited in *Phillips v. Clark*, Daily Record, June 2, 1939.

An. Code, 1924, sec. 66. 1912, sec. 62. 1904, sec. 62. 1888, sec. 60. 1798, ch. 101, sub-ch. 2, sec. 11; sub-ch. 15, sec. 18. 1842, ch. 27, Rule 15.

66. All appeals allowed from orders or decrees of the orphans' courts to the court of appeals, shall be taken and entered within thirty days after