

such order or decree appealed from; and the register of wills shall make out and transmit to the court of appeals, under his hand and the seal of his office, a transcript of the record of proceedings in such case, within thirty days after the appeal prayed; but in such transcript no paper or proceeding, not necessary to the determination of the appeal, shall be incorporated.

An application for a revocation of letters need not be filed within thirty days from the grant of such letters, but within the time, after knowledge of the order granting letters, provided by law within which an original application for letters may be made. *Burgess v. Boswell*, 139 Md. 680.

An appeal from an order admitting a will to probate will not be considered unless taken within thirty days after its date. The propriety of an order cannot be determined where the facts upon which the orphans' court passed the order are not in the record. *Wilson, in re Martin*, 135 Md. 197.

On an appeal from an order of the orphan's court annulling a guardian's bond, the propriety of an order of that court removing the guardian will not be considered, since an appeal from the latter order was not taken within thirty days. *Culver v. Cooke*, 133 Md. 686.

Ordinarily a petition asking that an order admitting a will to probate and granting letters testamentary be revoked should be filed within thirty days from the time when such order comes to the knowledge of the petitioner, or at least some sufficient reason for not doing so must be shown; if, however, fraud is alleged, the petitioner will be given a reasonable time within which to file his petition after discovery of the fraud. Petitioner held to have failed to exercise due diligence. Fraud not established. *Didier v. Carr*, 115 Md. 267.

Cited but not construed in *Houston v. Wilcox*, 121 Md. 95.

An appeal from the judgment of a law court on issues sent from the orphans' court, does not come under the operation of this section. *Hoppe v. Byers*, 60 Md. 395.

Appeal held to have been taken in time. *Wrightson v. Tydings*, 94 Md. 360.

Appeal dismissed for not having been taken in time. *Porter v. Timanus*, 12 Md. 292; *Mayhew v. Soper*, 10 G. & J. 372; *Sewell v. Sewell*, 1 H. & G. 10. And see *Billingslea v. Henry*, 20 Md. 285; *Brinsfield v. Mather*, 166 Md. 473.

Where the record is not transmitted to the appellate court within the required time, the appeal will be dismissed notwithstanding an agreement of counsel to the contrary. *Powell v. Curtis*, 78 Md. 500.

This section applied by analogy. *Stanley v. Safe Deposit Co.*, 88 Md. 407; *Redman v. Chance*, 32 Md. 53.

Cited but not construed in *Schwallerberg v. Jennings*, 43 Md. 556.

Petition asking revocation of probate of will must be filed within thirty days after actual or constructive knowledge of probate. *Perrin v. Praeger*, 154 Md. 550. And see *Hunter v. Baker*, 154 Md. 330 (involving petition to revoke order or decree of orphans' court; what amounts to constructive knowledge).

Appeal not taken in time, dismissed. *In re Estate of Knight*, 144 Md. 378; *Marx v. Reinecke*, 145 Md. 320.

Cited in *Goldsborough v. DeWitt*, 171 Md. 255.

See notes to secs. 45 and 46. *Cf.* secs. 6, 7, 36 and 37, and notes.

An. Code, 1924, sec. 67. 1912, sec. 63. 1904, sec. 63. 1888, sec. 61. 1798, ch. 101, sub-ch. 2, sec. 11. 1798, ch. 102, sub-ch. 15, sec. 18.

**67.** The court of appeals shall either affirm the decree, judgment, decision or order of the court below, or direct in what manner it shall be changed or amended; and the decision of the court of appeals shall be final and conclusive, and when certified under the seal of the court and transmitted to the orphans' court, the orphans' court shall proceed according to the tenor and directions thereof.

Where claims were allowed without sufficient proof, the case was remanded to the orphans' court for further testimony. *Bowling v. Lamar*, 1 Gill, 366.

The court of appeals only renders such judgment as the orphans' court should have rendered, and hence the judgment is not conclusive as respects the rights of the parties to the cause. *Levering v. Levering*, 64 Md. 414.

An. Code, 1924, sec. 68. 1912, sec. 64. 1904, sec. 64. 1888, sec. 62. 1798, ch. 101, sub-ch. 15, sec. 19.

**68.** An appeal from the orphans' court shall not stay any proceedings therein which may with propriety be carried on before the appeal is decided, if the said orphans' court can provide for the conforming to the decision