

of the court of appeals, whether the said decision may eventually be for or against the appellant.

Where an order directing money to be brought into court has been appealed from, but pending the appeal the orphans' court proceeds to enforce its order by proceedings for contempt, the court of appeals will stay further action by the orphans' court. *Bruscup v. Taylor*, 26 Md. 410.

Pending an appeal from an order revoking letters, the letters remain in full force. If an order is passed, however (prior to the actual granting of letters), ordering that letters be granted, they will not be granted pending an appeal from such order. *State v. Williams*, 9 Gill, 176.

The appeal only stays such proceedings as are thereby affected and which could not be consistently carried on until its termination; what may be done pending an appeal. *Jones v. Jones*, 41 Md. 360.

This section does not authorize the appointment of a new administrator pending an appeal, and the sequestration of the former administrator's property. *Biddison v. Storey*, 57 Md. 97.

This section having no application, the proceedings should have been stayed. *Offutt v. Gott*, 12 G. & J. 387.

Re stay of proceedings where issues are sent to a court of law, see sec. 5.

Cf. sec. 33, and notes.

An. Code, 1924, sec. 69. 1912, sec. 65. 1904, sec. 65. 1888, sec. 63. 1818, ch. 204, sec. 2.

69. If upon an appeal being entered in the orphans' court, the parties shall mutually agree, and enter their assent in writing, to be filed by the register of wills, that the appeal shall be made to the circuit court for the county, or superior court of Baltimore City, the orphans' court shall direct the transcript of the proceedings to be transmitted to the circuit court, or superior court of Baltimore City, whose decision shall be final.

The mutual assent confers jurisdiction under this section; an absolutely full transcript need not be made out, and the original evidence may be made use of. *State v. McCarty*, 64 Md. 260.

This section referred to in construing Art. 93, Secs. 252-254. *Baldwin v. Hopkins*, 172 Md. 228.

An. Code, 1924, sec. 70. 1912, sec. 66. 1904, sec. 66. 1888, sec. 64. 1836, ch. 289, sec. 1.

70. It shall be the duty of the clerk or register transmitting a record to the court of appeals to mark upon the record the amount of the costs taxed against the plaintiff and defendant, respectively, to the time of the appeal.

This section is important and should be invariably observed; the omission of the clerk, however, to note the costs in the record does not affect the right of the party to whom the costs are awarded to collect such costs. *Marshall v. Marshall*, 124 Md. 261.

Costs.

An. Code, 1924, sec. 71. 1912, sec. 67. 1904, sec. 67. 1888, sec. 65.

71. In appeals from the courts of equity and orphans' courts, the awarding of costs shall be in the discretion of the court of appeals.

This section applied. *Hamilton v. Schwehr*, 34 Md. 117.

Cited but not construed in *Waring v. Edmonds*, 11 Md. 433.

As to costs, see also secs. 14, 16, 30, 47 and 106. As to the payment of costs in cases before justices of the peace, see sec. 102. As to the cost of records and briefs, see sec. 53, *et seq.*, and art. 36, sec. 13.

Where the court of appeals orders a new trial, the lower court has power to stay further proceedings until the costs are paid—art. 75, sec. 74.

An. Code, 1924, sec. 72. 1912, sec. 67A. 1816, ch. 650.

72. In all appeals from the courts of law and equity as well as the Orphans' Court to the Court of Appeals of Maryland there shall be taxed to those to whom costs may be awarded by the Court of Appeals in any decree, judgment or order in the nature of a judgment or decree such sum