

1888, art. 5, sec. 38. 1860, art 5, sec 30. 1841, ch. 46, sec. 2. 1842, ch 288
1864, ch. 322. 1888, ch. 34. Rule 16.

40. 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.

Hannon v State, 9 Gill, 440. *Glenn v. Chesapeake Bank*, 3 Md. 478. *State v. Mister*, 5 Md 16. *Sample v Motter*, 5 Md 368. *Dugan v. Hollins*, 11 Md. 75. *Mayor, etc., v. Reynolds*, 18 Md. 272. *Bowie v. Agric. Coll.*, 27 Md. 268. *Andrews v Poe*, 30 Md. 486. *O'Hern v. Browning*, 33 Md 475. *Hooper v. Turnpike Co*, 34 Md. 529. *Mince v Tucker*, 37 Md. 362. *Lewin v. Simpson*, 38 Md. 481. *Meloy v. Squires*, 39 Md 175. *Bowie v Neal*, 41 Md. 130. *Meloy v. Squires*, 42 Md. 378. *Ewell v. Taylor*, 45 Md. 573. *Nutwell v. Nutwell*, 47 Md 47. *N. C. R. R. Co. v. Rutledge*, 48 Md. 262. *Wilson v Merryman*, 48 Md. 334. *Rau v. Bennis*, 49 Md. 316. *Willis v. Jones*, 57 Md. 366. *Biddison v. Mosely*, 57 Md. 92. *Downes v. Friel*, 57 Md. 532. *Mason v Gauer*, 62 Md. 263. *B & O. R. R. v. State*, 62 Md. 479. *Parsons v. Padgett*, 65 Md. 356. *Chappell v. Chappell*, 86 Md. 540. *Steiner v. Harding*, 88 Md. 344. *Miller v. Gehr*, 91 Md. 714.

Ibid sec. 39. 1864, ch 322.

41. If the clerk shall have prepared the record as required by law, and the appellant or plaintiff in error shall have neglected or omitted to pay for such record, or by any other neglect or omission on the part of the appellant or plaintiff in error, the said record shall not be sent to the court of appeals within time, the court from which the appeal was taken may, on motion, strike out the entry of such appeal and proceed to execution, or other proceedings, as if such appeal had never been entered, and thereafter no other appeal or writ of error shall be allowed.

Meloy v. Squires, 39 Md. 175. *Ibid*. 42 Md. 378. *Nutwell v. Nutwell*, 47 Md. 47. *Rau v. Bennis*, 49 Md. 316.

Ibid. sec. 40. Rule 17

42. In all cases of cross-appeals, or of more than one appeal being entered in the same case from any judgment, decree or order, there shall be but one transcript of the record transmitted to the court of appeals, and that shall be used upon the hearing of all such appeals; in cases arising under this rule, the court of appeals shall have power to award costs, including the cost of transmitting the record, to either of the parties in its discretion, or the costs may be apportioned as the said court may deem just.