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DEPOSITIONS AND DISCOVERY — DIGEST OF MARYLAND DECISIONS

By CHRISTOPHER H. FOREMAN*

INTRODUCTION

One of the few criticisms Sir William Blackstone allowed himself to level at the common law was its lack of any effective means of discovery.[1] Such discovery as could be had was available only in equity, and then only to a very limited extent. The procedure was cumbersome, time-consuming, expensive and often fruitless.[2]

The ancient limitations upon discovery which afflicted the common law jurisprudence in Blackstone's day, passed as an hereditary procedural ailment into the jurisprudence of Maryland, and remained in its system — with minor and unimportant mutations — until 1941, when the Deposition and Discovery Rules were first adopted.[3]

The adoption of the rules did not eliminate the ailment. Because law students must master the vices as well as the virtues of the law under which they will practice, and a vice will frequently provide a telling advantage to one of the parties in litigation, very grave weaknesses in the law are often accepted by lawyers, not as the necessary evils of a slowly evolving system, but as praise-worthy principles

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The author and the REVIEW acknowledge with thanks the participation of Hon. Emory H. Niles and Frederick W. Invernizzi in the original preparation of this article, and in getting it in shape for printing. For the extent of that participation, see *The Editor's Page*, *infra*, p. 44.

[1] 3 BLACKSTONE, COMMENTARIES (Lewis's ed., 1902) 382.

[2] A thorough, if somewhat technical, account of the evolution of the law of discovery, appears in Millar, Civil Procedure of the Trial Court in Historical Perspective, Law Center N.Y.U., Judicial Administration Series (1952).

[3] Now Maryland Rules of Procedure (1956) Rules 400-425, as amended Sept. 26, 1957. See Reporter's Explanatory Notes, Flack's 1947 Md. Code Supplement, pp. 2029-2040. See also; Pike and Willis, *The New Maryland Deposition And Discovery Procedure*, 6 Md. L. Rev. 4 (1941).

epitomizing the genius of Anglo-Saxon jurisprudence. The first reaction to legislation which would abolish a vice of long-standing is resistance. It then becomes the task of the courts, by decree, to enforce the innovations, and by written opinion, to educate the bar.

At an early stage in the interpretation of the discovery rules the Court of Appeals made it clear that the task of fitting the new procedure into the Maryland legal system would rest largely with the trial courts.[4] Such a result was but a corollary of the rule that interlocutory orders are not, generally, reviewable on appeal.

In consequence, with a few minor exceptions, the law of discovery in Maryland is to be found in the opinions of the trial courts — particularly, the trial courts of Baltimore City. Since none of the current reporter systems embrace the opinions of Maryland's *nisi prius* tribunals, the result is that there is no single authoritative source which reports, in an organized system, this important and rapidly growing body of adjective law.

It is the purpose of this digest to fill the gaps to which reference has just been made.

Because the opinions of the Court of Appeals of Maryland and the Federal Courts are fully reported in established reporter systems, the original plan was to include only the discovery opinions of the trial courts of the State of Maryland. However, in the interest of completeness it was finally decided that the digest should include all of the cases which may be said to represent the Maryland law. In keeping with that principle an attempt has been made to digest the pertinent opinions of: (1) the trial courts of Maryland, (2) the United States District Court for the District of Maryland, (3) the Court of Appeals of Maryland, and (4) the United States Court of Appeals for the Fourth Judicial Circuit.

The plan of the digest follows the arrangement of the Deposition and Discovery Rules of the Maryland Rules of Procedure (1956), viz., Maryland Rules 400 through 425. The major topics of the digest are derived from the headings of the rules, and an effort has been made to follow the heading and sub-heading structure of the rules as far as practicable. In consequence, one who wishes to make the most effective use of the digest should use it in connection

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[4] *Cf.* Hallman v. Gross, 190 Md. 563, 59 A. 2d 304 (1948), and Roberts v. *Roberts*, 198 Md. 299, 82 A. 2d 120 (1951). See also: *Appealability of Denials of Motions To Implead And Related Discretionary Orders In Maryland*, 12 Md. L. Rev. 145, 151 (1951).

with the Maryland Rules of Procedure (1956). For simplicity, only those headings under which cases appear have been included, although topic headings will be added as new points are decided.

Although the contents of future editions of the MARYLAND LAW REVIEW are committed to the judgment of editorial boards of the future, it is hoped that they will find it desirable and possible to keep the digest current by publishing supplements from time to time (unless this need is filled in some other manner).

EDITORIAL COMMENT

The Amendments of September 26, 1957, frequently referred to, appear in the *Daily Records* of October 3 and 11, 1957. As pointed out in the introduction, while an effort was made to follow the arrangement of the Rules as far as practicable, it was frequently necessary to add other headings for purposes of classification and indexing. To assist the user of the Digest, the REVIEW has, with the cooperation of the *Daily Record* staff, adopted the following system for distinguishing between the various types of headings and subheadings:

(1) All titles of Rules themselves appear in full capitals, preceded by the Rule number, viz. — RULE 400. APPLICATION.

(2) A subheading which is identical with the title of a section or subsection of the Rule itself, will appear in italics, — viz. *All Actions*. Where a subheading in category (2) is used (as a sub-subheading) in connection with one in category (3), as in Rule 413, it will be preceded by a dash, viz., — *By Adverse Party*, and will be further indented.

(3) A subheading which is *not* the same as a section or subsection of the Rule, but is included for purposes of description or classification, will appear in small capitals, viz. — WHO ENTITLED. Where a subheading in category (3) is used as a sub-subheading in connection with one in category (2), as in Rule 410, it will be preceded by a dash, viz. — BY DEPOSITION, and will be further indented.

(4) Further subdivisions under either category (2) or (3) will appear in ordinary type, viz. — Prior Medical History. They will also be indented further than the subheadings under categories (2) and (3).

RULE 400. APPLICATION

All Actions

The Deposition and Discovery Rules furnish means for discovery, at law or in equity, which are broader than the former inherent equity jurisdiction.

Johnson v. Bugle Linen Service, 191 Md. 268, 60 A. 2d 686 (1948).

Modern discovery statutes or rules are intended to facilitate discovery, not to stimulate the ingenuity of lawyers and judges to make the pursuit of discovery an obstacle race.

Barnes v. Lednum, 197 Md. 398, 406, 79 A. 2d 520 (1951).

The discovery contemplated by the deposition and discovery rules is designed to permit inquiry into the facts underlying an opponent's case as well as to bolster one's own.

Herzinger v. City of Baltimore, 203 Md. 49, 58-59, 98 A. 2d 87 (1953).

The discovery rules should be liberally construed to effectuate their purpose.

Hawk v. Wil-Mar, Inc., 210 Md. 364, 374, 123 A. 2d 328 (1956).

Discovery rules may not be used by a judgment creditor in lieu of supplementary proceedings to ascertain whether the judgment debtor has assets for the payment of the judgment, but the rules were intended for use in the trial itself, and not after trial has been concluded.

U. O. Colson Co. v. Goff, 204 Md. 160, 102 A. 2d 548 (1954).

Editorial Note: Following the decision in the *Colson* case, the Court of Appeals' Rules Committee, pursuant to the request contained in the opinion (p. 164), studied the matter and then proposed a rule providing that the discovery process may be used in aid of execution. The Court of Appeals adopted the recommendation and its Rules now so provide. See Maryland Rules of Procedure (1956), Rule 627 (Proceeding in Aid of Execution).

Federal Rules 27 (*Cf.* Md. Rule 402) and 34 (*Cf.* Md. Rule 419b) can be invoked only in aid of a proceeding to enforce some right which the plaintiff has, and no such claim is here presented.

United States v. Morelock, 124 F. Supp. 932 (D.C. Md., 1954).

Under Md. Code (1951), Art. 101, Section 7(a), a party to proceedings before the State Industrial Accident Commission has the right to take depositions in a manner similar to the practice in civil actions in law or equity.

Op. A. G., *Daily Record,* Mar. 15, 1956.

Under the new Maryland Rules of Procedure, and Md. Code (1951), Art. 101, Section 7(a), parties to proceedings before the State Industrial Accident Commission may take a deposition upon written questions in the same manner that such deposition may be taken in a civil action.

A party to a proceeding before the State Industrial Accident Commission may not serve written interrogatories on an adverse party to be answered under oath.

Op. A. G., *Daily Record,* Mar. 1, 1957.

Editorial Note: (1) The Laws of 1957, Chapter 814, amended the last sentence of Section 7(a) of Article 101, so as to read:

"Any such party shall have the right to take oral depositions, within or without the State of Maryland as provided by law, solely for the purpose of perpetuating testimony and not for the purpose of discovery."

(2) The Laws of 1957, Chapter 399, added a new section (276A) to Article 93, reading as follows:

"The statutes and rules of court for taking depositions shall apply to all actions and proceedings in the orphans' courts in the same manner and with like effect as said statutes and rules apply to the law and equity courts of this State."

RULE 401. DEPOSITION AFTER ACTION INSTITUTED

SCOPE OF REMEDY

See cases digested under Rule 400.

Ordinarily, a pretrial deposition is taken either for the purpose of discovery or for use at the trial to impeach inconsistent testimony.

Pullman Co. v. Ray, 201 Md. 268, 273, 94 A. 2d 266 (1953).

The scope of discovery by oral Depositions or written Interrogatories is broader than the scope of a Demand for Particulars. Discovery procedure also has advantages in that it requires answers under oath; it avoids technicalities; and it may be used at any time.

The object of a demand for particulars is limited to obtaining information as to the opponent's case in order to enable the interrogating party to plead; Discovery extends to all relevant matters not privileged.

The object of discovery is to enable a party to prepare for trial, as well as to plead, by

(1) obtaining information regarding his opponent's case;

(2) obtaining information not known to the interrogating party to support his own case;

(3) fixing or "pinning down" his opponent with reference to facts already known to the interrogating party.

Barnett v. Middleton, Daily Record, Apr. 2, 1955.

RULE 402. DEPOSITION BEFORE ACTION INSTITUTED

PURPOSE

Depositions before proceedings are for perpetuation of testimony and not for discovery.

Barnett v. Middleton, Daily Record, May 4, 1955.

In the absence of special circumstances, the purpose of depositions before proceedings is to perpetuate testimony, not to effect discovery.

Mayer v. Dept. of Employment Security, Daily Record, Apr. 22, 1955

Editorial Note: Section b of Rule 402, was amended September 26, 1957, by adding subsection 1, thus clarifying the section in regard to taking depositions for perpetuation of testimony on behalf of persons under disability.

RULE 403. BEFORE WHOM TAKEN

PRESENCE OF PARTIES

A party has the right, under ordinary circumstances, to be present during the taking of the deposition of the opposing party.

Smith v. Grzymski, Daily Record, May 16, 1956.

RULE 405. NOTICE FOR DEPOSITION

A notice to take depositions need not specify whether the depositions are to be taken for the purpose of discovery, or for use as evidence, or both.

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

A notice for oral deposition to a party may now include a demand that the party bring to the place of taking the

deposition designated documents or things. The amendment does not apply to a witness who is not a party.

Blalock v. Rubin, Daily Record, Oct. 9, 1957.

Editorial Note: The amendment of September 26, 1957, added subsection 2(b) to Rule 405. Its purpose is to require a *party* to produce at his deposition designated documents or other things without the necessity for issuing for him a *subpoena duces tecum.* Inasmuch as a party must attend for his deposition without a summons (Rule 407a), it should be unnecessary to issue a *subpoena duces tecum* where documents and so forth are required. The Court has ample authority under Rule 406 to protect such a party against abuse of this provision.

RULE 406. ORDER TO PROTECT PARTY AND DEPONENT

Power to Make — Scope — [406a]

Good Cause — At Other Time or Place — Hardship or Oppression

Under the rule permitting the court for good cause shown, to make an order [*Cf.* 406a(1)] that a deposition shall not be taken, the question of the existence of good cause is for the trial court in the exercise of its judicial discretion. Mandamus will not lie to compel the trial judge to vacate such an order.

National Bondholders Corporation v. McClintic, 99 F. 2d 595 (4th Cir., 1938).

A plaintiff resident of New York served notice on the defendant resident of Baltimore that the plaintiff desired to take the deposition of himself and of a witness in New York. The defendant applied for an order [406a(2), 406a(10)] requiring the plaintiff to come to Baltimore to take the deposition. HELD: that it was not a case of "hardship or oppression", but one of mere inconvenience. Application denied.

Arons v. Gangi, Daily Record, Mar. 2, 1956.

Previous conviction — reasonable ground necessary to obtain information about [406 a (4), 406 a (10)].

Covey v. Baltimore Transit Co., Daily Record, Mar. 6, 1958 (*infra,* p. 33).

The taking of a deposition of a defendant in a slander and libel case will not be stayed pending a criminal trial of the plaintiff for alleged perjury in connection with the same general subject matter, where the civil action was instituted before the indictment was returned, and the examination of the defendant would not be prejudicial to the public interest. The scope of examination would be

limited to the requirements of relevancy to the issue, and it is in the public interest that all facts be brought out.

Hiss v. Chambers, 8 F.R.D. 480 (D.C. Md., 1948).

A party may properly require the adverse party to answer interrogatories after the adverse party's oral deposition has been taken. A party alleging "hardship or oppression" by such procedure may move for relief under Rule 406 [406a(10)].

Carelos v. Baltimore Transit Co., Daily Record, Dec. 6, 1957.

RULE 407. SUMMONS

A notice for oral deposition to a *party* may now include a demand that the party bring to the place of taking the deposition designated documents or things under Rule 405. This does not apply to a witness who is not a party, for which, see Rule 407b.

Blalock v. Rubin, Daily Record, Oct. 9, 1957.

RULE 410. SCOPE OF EXAMINATION

Generally — [*410a*]

— BY DEPOSITION OR INTERROGATORIES

Although written interrogatories may not be as effective as oral depositions, their scope is the same as that of oral depositions; and answers to detailed questions may properly be demanded by them, in order to save expense.

Benvenga v. Baltimore Transit Co., Daily Record, Apr. 25, 1955.

The new rules of practice and procedure furnish means for discovery at law or in equity, which are broader than former inherent equity jurisdiction. Discovery Rules 1-8 (Now Rules 400-425).

Johnson v. Bugle Linen Service, 191 Md. 268, 60 A. 2d 686 (1948).

Modern discovery rules are intended to facilitate discovery, not to stimulate the ingenuity of lawyers and judges to make the pursuit of discovery an obstacle race.

Barnes v. Lednum, 197 Md. 398, 406, 79 A. 2d 520 (1951).

The obtaining of an order of court for the production of documents under Discovery Rule 4 (now Rule 419) does not limit the scope of examination permissible under a general notice to take oral depositions previously served.

Such documents are in the aid of rather than in lieu of the oral examination permitted under Deposition Rule 1 (now 401) and Discovery Rule 3 (now 410).

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

Interrogatories as to matters not within the knowledge of the interrogated party, or seeking expressions of opinion, are generally improper.

Interrogatories need not be limited to ultimate facts, but may relate to evidentiary matters and generally to any facts, not privileged, relevant to the issues. However, they should be relatively few in number and should be limited to important facts in the case. More comprehensive examination of the adverse party may be obtained by depositions upon oral examination.

Coca Cola Co. v. Dixie Cola Laboratories, 30 F. Supp. 275 (D.C. Md., 1939).

Under general notice to take the depositions of a witness for discovery the witness may be required to testify as to all matters as to which his evidence would be admissible in evidence at the trial.

The form of questions to witnesses on depositions for discovery should follow the usual form used in court and need not in each question expressly exclude such answers as might be inadmissible.

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

A party may properly require the adverse party to answer interrogatories after the adverse party's oral deposition has been taken. A party alleging hardship or oppression by such procedure may move for relief under Rule 406.

Carelos v. Baltimore Transit Co., Daily Record, Dec. 6, 1957.

— RELATIONSHIP TO OTHER PLEADINGS

Bill of Particulars

The scope of discovery by oral Depositions or written Interrogatories is broader than the scope of a Demand for Particulars. Discovery procedure also has advantages in that it requires answers under oath; it avoids technicalities; and it may be used at any time.

The object of a Demand for Particulars is limited to obtaining information as to the opponent's case in order to enable the interrogating party to plead; Discovery extends to all relevant matters not privileged.

The object of Discovery is to enable a party to prepare for trial, as well as to plead, by

(1) obtaining information regarding his opponent's case;
(2) obtaining information not known to the interrogating party to support his own case;
(3) fixing or "pinning down" his opponent with reference to facts already known to the interrogating party.

Barnett v. Middleton, Daily Record, Apr. 2, 1955.

A bill of particulars to a general issue plea will not ordinarily be granted. Difference of function between demands for particulars and the discovery procedure.

Broady v. The Baltimore Transit Co., Daily Record, Apr. 27, 1956.

—RELEVANCY—WHAT CONSTITUTES—PREVIOUS CONDITION

Health — Prior Medical History

In a suit for personal injuries, written interrogatories respecting previous accidents and other medical history of plaintiff are proper.

Cherry v. Ougsingco, Daily Record, Mar. 24, 1955.

An interrogatory requesting details of treatment given by all physicians who have treated a party is proper; but diagnoses and prognoses of all physicians who have treated the party is not proper since interrogator is entitled only to diagnoses and prognoses of experts whom adversary proposes to call as witnesses.

Reynolds v. Koutzes, Daily Record, Dec. 2, 1957.

Accidents

In a suit for personal injuries to a passenger arising out of a collision between street cars at a busy corner, an interrogatory requesting the number of previous accidents at the same corner during the past two years is not proper.

Branch v. Baltimore Transit Co., Daily Record, Apr. 12, 1955.

In a suit for personal injuries, written interrogatories respecting previous accidents and other medical history of plaintiff are proper.

Cherry v. Ougsingco, Daily Record, Mar. 24, 1955.

The owner of an automobile driven by one of his employees may be properly asked by interrogatories: (1) whether he examined the driving record of the employee

before employing him, and (2) data regarding other accidents in which the employee was involved during the period of his employment.

Whalen v. Bosse and Western Elec. Co., Daily Record, Nov. 28, 1956.

An interrogatory to a brewing company to state whether, during the same month in which a beer bottle is alleged to have exploded, any other bottles exploded and the cause thereof is improper.

An interrogatory to a brewing company to state the names and addresses of all persons who, during the past three years had claimed to have been injured while handling its bottles is improper.

Howard J. Coberly v. Gunther Brewing Co., Daily Record, Apr. 20, 1957.

Income

An interrogatory requesting a party who claims damages for loss of earnings to disclose the net income reported by him in recent Federal Income Tax returns is improper; it is too broad in scope because not limited to earned income.

English v. Dittfield, et al., Daily Record, May 14, 1957.

Crime — Previous Conviction of

Ordinary case; false arrest case.

Covey v. Baltimore Transit Co., Daily Record, Mar. 6, 1958 (*infra,* p. 33).

—RELEVANCY—WHAT CONSTITUTES—TANGIBLE THINGS—[410a(2)]

Existence of Tangible Things

When one party possesses a transcript of previous proceedings relating to a case, his adversary may by interrogatories require him to disclose the nature of such proceedings, and the name and address of the reporter.

Matthews v. Reiss, Daily Record, May 23, 1957.

Photographs — Existence of Discoverable.

Tsiontsiolos v. Sun Cab Co., Daily Record, Mar. 7, 1958 (*infra,* p. 33).

Production and Inspection

A party may not require an investigator for the adverse party's insurer, on the taking of his deposition, to produce statements of persons whom he has interviewed and who may be called as witnesses at the trial. It is not

reasonable to require a party who has made an investigation at his own expense to furnish his adversary the results thereof free of cost.

State of Maryland v. Pan-American Bus Lines, 1 F.R.D. 213 (D.C. Md., 1940).

— RELEVANCY — WHAT CONSTITUTES — PERSONS HAVING KNOWLEDGE OF RELEVANT FACTS — [410a(3)]

Names of Witnesses to be Called

A party is not required to furnish his adversary with the names of witnesses upon whose testimony he intends to rely, but may be required to furnish names of persons known to him to have a specified connection with the controversy.

Coca Cola Co. v. Dixie-Cola Laboratories, 30 F. Supp. 275 (D.C. Md., 1939).

An interrogatory framed in general terms requesting the identity of persons "having knowledge of relevant facts" is too general. Interrogatories should be directed towards identifying persons having knowledge as to specific facts, or classes of facts.

Rapacky v. Stanley Co., Daily Record, Oct. 13, 1956.

An interrogatory requiring the names of "all persons who have any knowledge" about material facts of an accident or the instrumentality involved, is too general when it is filed in addition to proper interrogatories asking the names of persons who were at the scene and who actually witnessed the accident.

Currier v. States Marine Corp., Daily Record, Mar. 16, 1956.

A party on taking the deposition of an investigator for the adverse party's insurer may require him to give the name, identity, and addresses of persons who were eye witnesses to the accident giving rise to the suit.

State of Maryland v. Pan American Bus Lines, 1 F.R.D. 213 (D.C. Md., 1940).

An interrogatory requesting names of all persons having knowledge of alleged acts of unfair competition is improper unless limited to customers of the defendant.

Coca Cola Co. v. Dixie-Cola Laboratories, 30 F. Supp. 275 (D.C. Md., 1939).

A motion for production of documents requesting "all written reports, memoranda, or other records of confer-

ences of officers or members of the technical staff of the defendants" in which certain manufacturing processes were discussed, is too general and comprehensive.

Lever Bros. Co. v. Proctor & Gamble Mfg. Co., 38 F. Supp. 680 (D.C. Md., 1941).

Names of Doctors to be Called

An interrogatory requesting the names of all doctors whom the defendant plans to call as witnesses is proper, since it may be assumed, in absence of contrary information, that doctors will be called, at least in part, as expert witnesses.

Feraci v. Gulfleisch, Daily Record, Dec. 2, 1957.

Names of Experts to be Called

In a personal injury case, since each party is entitled to the reports of medical experts whom his opponent proposes to call as witnesses, an interrogatory requesting the name of such experts is proper.

Reynolds v. Koutzes, Daily Record, Dec. 2, 1957.

— PERSONS FROM WHOM STATEMENTS HAVE BEEN TAKEN —
[410a(3)]

Oral

Although a party may by interrogatories obtain the names of witnesses who have made written statements for his adversary, such party may not obtain the names of persons who have made oral statements.

Caplan v. Zalis, Daily Record, Mar. 1, 1956.

Written

A party may, through interrogatories, properly require the adverse party to disclose to him the names of persons from whom he has taken written statements.

Greef v. A. H. Bull Steamship Co., Daily Record, Mar. 1, 1956.

Where the most diligent efforts could not obtain either the knowledge that the missing witness had or leads to what he knew, it was assumed, but not decided that the statement of such missing witness in the possession of one party should be made available to the adverse party.

Hawk v. Wilmar, Inc., 210 Md. 364, 374, 123 A. 2d 328 (1956).

Investigators

A party may through interrogatories properly require the adverse party to disclose to him the names of

persons who have investigated the activities of the adverse party before and after an accident, but may not require disclosure of knowledge which constitutes a part of the attorney's work product.

Brocato v. King, Daily Record, June 29, 1956.

Surprise Witness

When one party calls to the stand a "surprise witness" who has not been listed in the answer to an interrogatory requesting the names and addresses of persons having knowledge of the facts, the adverse party should have the option of obtaining a postponement of the trial.

Lagna and Bay v. Harlan, Daily Record, Feb. 14, 1956.

A series of interrogatories can be made continuing in character by the inclusion therein of a note as follows:

> "These interrogatories shall be deemed continuing so as to require supplemental answers if defendant obtains further information between the time answers are served and the time of trial."

Gordon v. Horn & Horn, Daily Record, June 13, 1956.

Editorial Note: Gordon v. Horn & Horn, supra, was decided prior to the adoption of Rule 417a 3, which provides a procedure for supplementary interrogatories in order to obtain additional information.

Where an interrogated party has not completed his investigation his attempted reservation of the right to call additional witnesses is invalid. If names of later discovered witnesses are not communicated to the other side in proper time, they should be treated as surprise witnesses.

Tinari v. Mayor, etc. of Baltimore, Daily Record, Dec. 28, 1956.

— FACTS SUPPORTING ADVERSARY'S POSITION — [410a(4)]

Although a party has the right to inform himself before trial through the discovery rules of the facts and contentions forming his opponent's case, he has no right by the use of the discovery procedure to obtain copies of statements procured by his opponent from witnesses in preparation for the trial. He has the right to obtain from his opponent the names of persons having knowledge of the facts and to take their depositions himself.

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

An interrogatory requesting a concise statement of the facts supporting the adverse party's position, is proper.

Wilhelm v. Serio, Daily Record, Dec. 28, 1956.

The answer "See declaration" is an insufficient response to an interrogatory requesting plaintiff's own version and account of the incident described in the declaration. A similar ruling was made in *Brooker v. Stevens, Daily Record,* March 29, 1955, with respect to doctor's reports, in which one party interrogates the other as to the nature of injuries. The answer "See Attached Medical Reports" was there held insufficient.

Robinson v. Baltimore Transit Co., Daily Record, Nov. 13, 1957.

Discovery contemplated by the rules is designed to permit inquiry into facts underlying an opponent's case as well as to bolster one's own.

Herzinger v. City of Baltimore, 203 Md. 49, 98 A. 2d 87 (1953).

An interrogatory is proper which seeks to ascertain the facts upon which a defendant bases an allegation that the plaintiff was guilty of contributory negligence. Interrogatories may be used to ascertain the contentions of the adverse party.

An interrogatory should not ask for a statement "in detail" of the alleged contributory negligence.

May v. Baltimore & Ohio Railroad Company, 17 F.R.D. 288 (D.C. Md., 1955).

No Objection Based on Inadmissibility at Trial — [410b]

Interrogatories are not limited to evidence which would be admissible at trial.

Republic of China v. National Union Fire Insurance Co., 142 F. Supp. 551 (D.C. Md., 1956).

Writings Obtainable — [*410c*]

— *Party's Own Statement* and *Report of Expert*

Estimates for repairs made by persons who are to testify are discoverable by interrogatories. Estimates made by persons who are not to testify are not so discoverable.

North Howard Bldg. Co. v. Applefeld, Daily Record, May 6, 1957.

Written reports, diagnoses and prognoses of medical experts who are to testify may be obtained by interrogatory

under Rule 410c2. Such reports by experts who are not to testify may not be so obtained.

Hall v. Safeway Trails, Inc., Daily Record, May 29, 1957.

Although the exchange of medical reports by voluntary action is a commendable procedure, one party is not entitled to demand inspection of written medical reports obtained by his adversary, or the substance of oral medical reports made to his adversary.

Jones v. Salvation Army, Daily Record, Apr. 23, 1955.

A party could not, under old Discovery Rule 4, (now amended as Rule 419) require the inspection of a medical report obtained by the adverse party, on the ground that it is a "document".

Hall v. Gallo, Daily Record, Mar. 8, 1956.

Editorial Note: Jones v. Salvation Army and *Hall v. Gallo, supra,* were decided prior to the September 26, 1957 amendment to Rule 410. The latter now provides in Section c that a party may by written interrogatory or by deposition require an opposing party to produce or submit for inspection a written report of an expert, whom the opposing party proposes to call as a witness. It would seem that this would include a medical report. See *Hall v. Safeway Trails, Inc., Daily Record,* May 29, 1957.

A party's own statement and the report of an expert whom his opponent proposes to call as witness can now be obtained by interrogatory.

Blalock v. Rubin, Daily Record, Oct. 9, 1957.

Editorial Note: The September 26, 1957, amendment substituted "written interrogatory" for "question" in the first paragraph of section c of Rule 410, thus making it clear that discovery by interrogatories to a party (Rule 417) was included within the scope of examination provision relating to writings obtainable. The rules relating to discovery and production of documents and tangible objects by interrogatory, motion, notice and summons *duces tecum,* and methods of making objections are summarized in *Blalock v. Rubin,* Daily Record, Oct. 9, 1957.

Writings Not Obtainable — [410d]

— Object Prepared for Trial

A party may, through interrogatories, properly require an adverse party to disclose to him whether photographs have been taken of the instrumentality alleged to have caused an accident. He may not, however, without

good cause shown, require such photographs to be exhibited to him.

Currier v. States Marine Corp., Daily Record, Mar. 16, 1956.

A report by a surgeon to the Medical and Chirurgical Faculty (State Medical Society) which formed part of his request to be defended by the Faculty in a malpractice case which had been instituted against him, is "a document prepared in anticipation of litigation or in preparation for trial" under Maryland Rule 410d1, and is not subject to discovery by the opposite party.

State, Use of Britt v. Snyder, Daily Record, Feb. 20, 1957.

Attorney's Work Product

A party may through interrogatories properly require the adverse party to disclose to him the names of persons who have investigated the activities of the adverse party before and after an accident, but may not require disclosure of knowledge which constitutes a part of the attorney's work product.

Brocato v. King, Daily Record, June 29, 1956.

An interrogatory demanding that a party disclose the names of persons from whom information regarding certain facts has been obtained, is improper, since it seeks to obtain a part of the work product of the lawyer.

Siegel v. Green Acres, et al., Daily Record, Dec. 21, 1956.

A party who, in preparing for the trial of case involving what he believes to be an exaggerated claim against him, has taken moving pictures of the opposite party after an alleged injury, cannot, in the absence of good cause shown, be required, prior to trial, to disclose to the opposite party what such pictures show.

Fear of impeachment does not constitute the "good cause" required under Rule 4 (now Rule 419) for the discovery of such photographs or their contents, which constitute a part of the work product of the lawyer.

Dietz v. Baltimore Transit Co., Inc., Daily Record, June 3, 1955.

Photographs — As Attorney's work product.

Tsiontsiolos v. Sun Cab Co., Daily Record, Mar. 7, 1958 (*infra,* p. 33).

Although a party has the right to inform himself before trial through the discovery rules of the facts and contentions forming his opponent's case, he has no right by the use of the discovery procedure to obtain copies of statements procured by his opponent from witnesses in preparation for the trial. He has the right to obtain from his opponent the names of persons having knowledge of the facts and to take their depositions himself.

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

MATTERS KNOWN TO EXAMINING PARTY

An interrogatory asking for names of witnesses to alleged acts of contributory negligence is objectionable where the party has already given the names of all persons with knowledge of the facts.

May v. Baltimore & Ohio Railroad Co., 17 F.R.D. 288 (D.C. Md., 1955).

PRIVILEGED MATTERS

Communications Between Attorney and Client

After a decedent's death, memoranda taken by decedent's attorney as to communications by the decedent for drafting the will, and as to decedent's mental and physical condition, are not privileged in caveat proceedings and may be discovered by a demand for the production of such documents. The testator's death is good cause for such inspection.

Gambrell v. Hinkel, Daily Record, Dec. 19, 1956.

Secret Processes

Whether parties to a patent suit should be required to disclose secret processes on examination before trial has not been changed by the Federal Rules of Civil Procedure. Decision on the question whether at the taking of his deposition, a party to a patent suit should be required to disclose claimed secret processes was in the discretion of the court, reserved until trial, there appearing to be doubt as to whether such disclosure would be actually necessary to final decision.

Lever Bros. Co. v. Proctor & Gamble Mfg. Co., 38 F. Supp. 680 (D.C. Md., 1941).

Interrogatories asking what means are employed by plaintiff which give the product the qualities attributed to it by the trade-mark need not be answered.

In a trade-mark case in which defendant claims that the words used in the trade-mark are descriptive and that

the mark was not properly registered, interrogatories are proper which ask whether plaintiff's product is covered by a patent and if so, the patent numbers, and whether four specified patents cover the product. Use of the words in the patent as descriptive of the product or of the results obtained by its application would be relevant to the issues. No improper invasion of trade secrets would be involved.

S. C. Johnson & Sons, Inc. v. John C. Stalfort & Sons, Inc., 16 F.R.D. 370 (D.C. Md., 1954).

Self-Incrimination

The privilege against self-incrimination has no application to the records of a vessel, which are not such private records of the person making them as the constitutional provision would protect. The vessel should be required to answer an appropriate interrogatory as to wages earned on a previous voyage.

Korthinos v. Niarchos, 175 F. 2d 730 (4th Cir., 1949).

Governmental Privilege

An interrogatory demanding disclosure by the United States government of the author, date and custody of any memorandum of certain conversations between the American and British representatives is improper, since such conversations are privileged. Disclosure " 'would be prejudicial to the foreign relations of the United States and contrary to the public interest'."

Republic of China v. National Union Fire Insurance Co., 142 F. Supp. 551, 556 (D.C. Md., 1956).

The record of the trial before a Navy Court after a collision is privileged, and its production may not be demanded in behalf of the other vessel.

Pacific-Atlantic S.S. Co. v. United States, 175 F. 2d 632 (4th Cir., 1949).

RULE 412. ERROR AND IRREGULARITY IN DEPOSITION

Failure to object to the admission of a photograph at the taking of a deposition did not amount to a waiver of the objection since the ground of the objection could not have been removed.

Nocar v. Greenberg, 210 Md. 506, 510, 124 A. 2d 757 (1956).

RULE 413. USE OF DEPOSITION

AT MOTION FOR SUMMARY JUDGMENT

The court assumes that a pre-trial deposition may be used as an admission in lieu of an affidavit on a motion for summary judgment.

Pullman Co. v. Ray, 201 Md. 268, 273, 94 A. 2d 266 (1953).

AT TRIAL OR HEARING — [413a]

Rules of Evidence

In an automobile accident case, a pre-trial deposition of defendant respecting the position of the decedent on the highway was not inadmissible although on trial defendant did not cover such point in his testimony, since under the discovery rules a deposition may be used by an adverse party for any purpose and its use is not limited to the purpose of impeachment.

Billmeyer v. State, 192 Md. 419, 64 A. 2d 755 (1949).

Where a pre-trial deposition conflicts with the testimony of the witness at the trial, this does not prevent the testimony at the trial from having any weight, but goes to the credibility and weight of the testimony.

Campbell v. State, 203 Md. 338, 100 A. 2d 798 (1953).

The admissibility into evidence of a deposition, where the cross-examination is not completed because of the death of the witness, is, in equity, in the discretion of the court in view of the circumstances of the particular case, and the deposition is not necessarily inadmissible.

Meley v. DeCoursey, 204 Md. 648, 106 A. 2d 65 (1954).

For Impeachment

Any deposition so far as admissible under the rules of evidence, may be used at the trial by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness; and if only part of the deposition is offered in evidence, an adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts in accordance with Rule 413.

Reid v. Humphreys, 210 Md. 178, 122 A. 2d 756 (1956).

— *By Adverse Party*

In an automobile accident case, a pre-trial deposition of defendant respecting the position of the decedent on the highway was not inadmissible although on trial defendant did not cover such point in his testimony, since under the discovery rules a deposition may be used by an adverse party for any purpose and its use is not limited to the purpose of impeachment.

Billmeyer v. State, 192 Md. 419, 64 A. 2d 755 (1949).

— *Witness Not Available*

Witness Out of State

A defendant who was a resident of the district at the time suit was commenced but who for many months has been residing in another state and is more than 100 miles from the place of trial may introduce his own deposition at the trial, and it cannot be said that his absence was "procured" by himself so as to preclude use of the deposition.

Weiss v. Weiner, 10 F.R.D. 387 (D.C. Md., 1950).

RULE 415. COST OF DEPOSITION

Where a deposition taken for discovery is not admitted into evidence and is used merely to impeach a witness at the trial, the expense of taking the deposition should not be taxed as costs under Rule 415, in the absence of special circumstances.

McKinney v. Walker, Daily Record, Dec. 2, 1957.

RULE 417. DISCOVERY BY INTERROGATORIES TO PARTY

IN GENERAL

Although written interrogatories may not be as effecttive as oral depositions, their scope is the same as that of oral depositions; and answers to detailed questions may properly be demanded by them, in order to save expense.

Benvenga v. Baltimore Transit Co., Inc., Daily Record, Apr. 25, 1955.

The scope of Discovery by oral Depositions or written Interrogatories is broader than the scope of a Demand for Particulars. Discovery procedure also has advantages in

that it requires answers under oath; it avoids technicalities; and it may be used at any time.

The object of a Demand for Particulars is limited to obtaining information as to the opponent's case in order to enable the interrogating party to plead; Discovery extends to all relevant matters not privileged.

The object of Discovery is to enable a party to prepare for trial, as well as to plead, by

(1) obtaining information regarding his opponent's case;

(2) obtaining information not known to the interrogating party to support his own case;

(3) fixing or "pinning down" his opponent with reference to facts already known to the interrogating party.

Barnett v. Middleton, Daily Record, Apr. 2, 1955.

Application for the Discovery of a document other than a party's own signed statement or the report of an expert whom the opposing party proposes to call as a witness must be made by motion under Rule 419, and not by interrogatory.

Williams v.Yellow Cab Co., Daily Record, Mar. 8, 1957.

A party's own signed statement and the report of an expert whom his opponent proposes to call as a witness can now be obtained by interrogatory under Rule 410c.

Blalock v. Rubin, Daily Record, Oct. 9, 1957.

A party may properly require the adverse party to answer interrogatories after the adverse party's oral deposition has been taken. A party alleging hardship or oppression by such procedure may move for relief under Rule 406.

Carelos v. Baltimore Transit Co., Daily Record, Dec. 6, 1957.

WHEN THEY MAY BE SERVED — [417a1]

A plaintiff may propound interrogatories to the defendant after a demurrer to his declaration has been sustained with leave to amend.

Eastern Tar Products Corp. v. Maryland Casualty Co., Daily Record, May 2, 1956.

WHO MAY BE SERVED

It is generally true that the United States, like any other litigant, is subject to the Federal Rules of Civil Procedure, and may not refuse "to make the same sort of disclosure of its case as would be required of an individual plaintiff".

Republic of China v. National Union Fire Insurance Co., 142 F. Supp. 551 (D.C. Md., 1956).

NUMBER — LIMITED TO THIRTY — [417a2]

Where a party propounds more than 30 interrogatories in violation of the discovery rules, the Court will not sort the good from the bad and an exception to all will be sustained.

Griffith v. Polakoff, Daily Record, Oct. 9, 1956.

The limit of 30 interrogatories provided in Discovery Rule 2(a) (now Rule 417) does not apply to Requests for Admission of Fact and Genuineness of Documents provided for in Discovery Rule 6 (now Rule 421). A party who has filed 30 interrogatories may therefore without leave of court file requests for admissions in addition, there being no limit prescribed in the Rules as to the allowable number of such requests.

Thurman v. Hughes & Co., Daily Record, Apr. 6, 1955.

CONTINUING CHARACTER — [417a3]

A series of interrogatories can be made continuing in character by the inclusion therein of a note as follows:

> " 'These interrogatories shall be deemed continuing so as to require supplemental answers if defendant obtains further information between the time answers are served and the time of trial'."

Gordon v. Horn & Horn, Daily Record, June 13, 1956.

Editorial Note: Gordon v. Horn & Horn, supra, was decided prior to the adoption of Rule 417a 3, which provides a procedure for supplementary interrogatories in order to obtain additional information.

When one party calls to the stand a "surprise witness" who has not been listed in the answer to an interrogatory requesting the names and addresses of persons having knowledge of the facts, the adverse party should have the option of obtaining a postponement of the trial.

Lagna v. Harlan, Daily Record, Feb. 14, 1956.

Where an answer to an interrogatory is that the information sought is not yet available because investigation is incomplete, an exception to the answer will be overruled; but the answering party will be restricted at trial to proof within the answer, unless further information is later given at a reasonable time prior to trial.

Hayner v. Levin, Daily Record, Dec. 28, 1956.

Answer — [417*b*]

The answer "Hospital bill not yet received" is not a sufficient answer to an interrogatory demanding the amount of medical expenses incurred by the plaintiff, in the absence of special circumstances.

Jones v. Salvation Army, Daily Record, Apr. 23, 1955.

In a suit for personal injuries the defendant may require definite answers to interrogatories as to the nature, extent and permanence of the injuries claimed. The answer "See attached medical reports" is not sufficiently definite.

Brooker v. Stevens, Inc., Daily Record, Mar. 29, 1955.

An answer to an appropriate interrogatory that "information has not been received", or that "information will be furnished later", is in an ordinary case insufficient, and an exception thereto will be sustained.

Jones v. Baltimore Transit Co., Daily Record, Oct. 8, 1956.

The answer "See declaration" is an insufficient response to an interrogatory requesting the defendant's own version, or a concise statement of the incident described in the declaration.

Robinson v. Baltimore Transit Co., Daily Record, Nov. 13, 1957.

EXCEPTIONS TO ANSWERS — [417c]

When one party has filed an exception to an interrogatory or to an answer of his adversary, the case is placed upon the law docket. There is no need for an exception to an exception; and an exception to an exception will be overruled.

Lynch v. Lorenzo, Daily Record, Oct. 11, 1956.

An exception to an interrogatory or an answer must state the reason on which it is based.

A blanket exception to a series of interrogatories will be overruled. The excepting party must state the interrogatories to which he excepts.

Wolf v. Hellman, Daily Record, Dec. 28, 1956.

Scope — [417e]

See the cases under Rule 410.

Rules relating to discovery and production of documents and tangible objects by Interrogatory, Motion, Notice and Summons Duces Tecum, and methods of making objections summarized.

Blalock v. Rubin, Daily Record, Oct. 9, 1957.

INTERROGATORIES AFTER ORAL DEPOSITION — [417g]

A party may properly require the adverse party to answer interrogatories after the adverse party's oral deposition has been taken. A party alleging hardship or oppression by such procedure may move for relief under Rule 406.

Carelos v. Baltimore Transit Co., Daily Record, Dec. 6, 1957.

RULE 419. DISCOVERY OF DOCUMENTS AND PROPERTY

IN GENERAL

Good Cause and Notice

Editorial Note: For alternate methods of discovery of documents, see Rules 410c and 417e, relating to production of a limited class of documents by interrogatory or by deposition and Rules 405a 2(b) and 407b [both as amended Sept. 26, 1957] relating to production of documents on notice or summons *duces tecum* for use for pretrial deposition.

The obtaining of an order of court for the production of documents under Discovery Rule 4 (now Rule 419) does not limit the scope of examination permissible under a general notice to take oral depositions previously served. Such documents are in the aid of rather than in lieu of the oral examination permitted under Deposition Rule 1 (now 401) and Discovery Rule 3 (now 410).

Mendels v. Mercantile Trust Co., Daily Record, Sept. 16, 1944.

Under Discovery Rule 4 (now Rule 419) a motion for production of statements of witnesses, including parties to

the case, must be supported by a showing of good cause. Allegations in a motion that the moving party will be seriously prejudiced in the preparation of his case for trial without being apprised of the contents of the statements do not constitute an adequate showing of good cause.

Sutton v. Baltimore Transit Co., Daily Record, Aug. 9, 1954.

Editorial Note: The above case was decided prior to an amendment to Rule 410, which now provides in Section c, that a party may by written interrogatory or by deposition require that an opposing party produce or submit for inspection a signed statement previously given by him to the opposing party. The present rule therefore makes an exception in favor of statements of the litigants.

In a petition for discovery of documents and property good cause must be shown why discovery should be made.

Hallman v. Gross, 190 Md. 563, 575, 59 A. 2d 304 (1948).

A party desiring to inspect or obtain a copy of a document must proceed under Discovery Rule 4 (now Rule 419) and show good cause for his demand. An ordinary interrogatory under Discovery Rule 2 (now Rule 417) is not sufficient.

Leon v. Baltimore Transit Co., Daily Record, Apr. 17, 1953.

Editorial Note: The above case was decided prior to an amendment to Rule 410 (old Discovery Rule 3), which now provides in Section c, that a party may by written interrogatory or by depositions require that an opposing party produce or submit for inspection a signed statement previously given by him to the opposing party. See also Rule 417, Section e, providing that interrogatories may relate to any matters which can be inquired into under Rule 410.

Whether good cause exists to permit a party to see and copy statements of witnesses to accident obtained by other party is to be determined from the nature of the case and all circumstances thereof and is largely a matter within the discretion of the trial court. Request granted as to a witness who is dead and as to witness whose address is nonexistent, but denied as to witnesses who have moved to another state.

Gryglik v. The Baltimore Transit Co., Daily Record, June 6, 1955.

Good cause is not shown to compel the production of the statement of a witness if the witness is available to the

one seeking production of his statement and his knowledge of the facts of the occurrence can be secured by deposition or interview.

Hawk v. Wil-Mar, Inc., 210 Md. 364, 123 A. 2d 328 (1956).

A party who, in preparing for the trial of case involving what he believes to be an exaggerated claim against him, has taken moving pictures of the opposite party after an alleged injury, cannot, in the absence of good cause shown, be required, prior to trial, to disclose to the opposite party what such pictures show.

Fear of impeachment does not constitute the "good cause" required under Rule 4 for the discovery of such photographs or their contents, which constitute a part of the work product of the lawyer.

Dietz v. Baltimore Transit Co., Daily Record, June 3, 1955.

Photographs — good cause necessary to obtain.

Tsiontsiolos v. Sun Cab Co., Daily Record, Mar. 7, 1958 (*infra,* p. 33).

After a decedent's death, memoranda taken by decedent's attorney as to communications by the decedent for drafting the will, and as to decedent's mental and physical condition, are not privileged in caveat proceedings and may be discovered by a demand for production of such documents. The testator's death is good cause to support such inspection.

Gambrell v. Hinkel, Daily Record, Dec. 19, 1956.

Admiralty Rule 32, like Federal Civil Rule 34 (*Cf.* Rule 419) requires an applicant to show good cause for the production of documents, and to "show that they are not privileged and are material to the matter involved".

Republic of China v. National Union Fire Insurance Co., 142 F. Supp. 551 (D.C. Md., 1956).

Scope

Under Discovery Rule 4, General Rules of Practice and Procedure, Part Two (now Rule 419), discovery is permitted of evidence material to any matter involved in the proceeding and not just evidence necessary to the case of the party seeking discovery.

This Rule must be accorded a broad and liberal treatment so that its purpose will be accomplished.

This Rule applied to the discovery of matters that may well be in existence but not definitely known to the applicant.

Hallman v. Gross, 190 Md. 563, 59 A. 2d 304 (1948).

Discovery Rule 4, Part II, Rules and Procedure (now Rule 419) is patterned after Rule 34 of the Federal Rules of Civil Procedure and the Court of Appeals will look to the Federal courts for interpretation of the rule.

Discovery is permitted of evidence material to any matter involved in the proceedings, but is a power to be exercised with caution, and the party calling for its exercise should, with a reasonable degree of certainty, designate the books and papers required, and the facts expected to be proved thereby.

Eastern States Corp. v. Eisler, 181 Md. 526, 30 A. 2d 867 (1943), noted, 16 Md. L. Rev. 159 (1956).

A motion for production of documents requesting "all written reports, memoranda, or other records of conferences of officers or members of the technical staff of the defendants" in which certain manufacturing processes were discussed, is too general and comprehensive.

Lever Bros. Co. v. Proctor & Gamble Mfg. Co., 38 F. Supp. 680 (D.C. Md., 1941).

DOCUMENTS — BOOKS — ACCOUNTS — REPORTS

Report to Superior

Report of an accident made by a subordinate employee to his superior in the ordinary course of his duties, and not in preparation for litigation, is subject to Discovery under Rule 4 (now Rule 419).

Bledsoe v. Baltimore Transit Co., Inc., Daily Record, June 13, 1955.

Medical Reports

Although the exchange of medical reports by voluntary action is a commendable procedure, one party was not entitled under old Discovery Rule 4 (now Rule 419) to demand inspection of written medical reports obtained by his adversary, or the substance of oral medical reports made to his adversary.

Jones v. Salvation Army, Daily Record, Apr. 23, 1955.

A party cannot require the inspection of a medical report obtained by the adverse party, on the ground that it is a "document".

Hall v. Gallo, Daily Record, Mar. 8, 1956.

Editorial Note: Jones v. Salvation Army and *Hall v. Gallo, supra,* were decided prior to the September 26, 1957 amendment to Rule 410. The latter now provides in Section c that a party may by written interrogatory or by deposition require an opposing party to produce or submit for inspection a written report of an expert, whom the opposing party proposes to call as a witness. It would seem that this would include a medical report. See *Hall v. Safeway Trails, Inc., Daily Record,* May 29, 1957.

A report by a surgeon to the Medical and Chirurgical Faculty (State Medical Society) which formed part of his request to be defended by the Faculty in a malpractice case which has been instituted against him, is "a document prepared in anticipation of litigation or in preparation for trial" under Maryland Rule 410d1 and is not subject to discovery by the opposite party.

State, Use of Britt v. Snyder, Daily Record, Feb. 20, 1957.

Testamentary Memoranda

After a decedent's death, memoranda taken by decedent's attorney as to communications by the decedent for drafting the will, and as to decedent's mental and physical condition are not privileged in caveat proceedings and may be discovered by a demand for production of such documents.

Gambrell v. Hinkel, Daily Record, Dec. 19, 1956.

Transcript of Prior Proceeding

Where one party demanded a copy of a transcript taken in the Traffic Court by his adversary the Court ordered that the demanding party should pay one-half the cost of the original and the whole cost of making a copy.

Smith v. Wilson, Daily Record, May 31, 1957.

LETTERS AND PHOTOGRAPHS

A party may, through interrogatories, properly require an adverse party to disclose to him whether photographs have been taken of the instrumentality alleged to have caused an accident. He may not, however, without good cause shown, require such photographs to be exhibited to him.

Currier v. States Marine Corp., Daily Record, Mar. 16, 1956.

A party who, in preparing for the trial of case involving what he believes to be an exaggerated claim against

him, has taken moving pictures of the opposite party after an alleged injury, cannot, in the absence of good cause shown, be required, prior to trial, to disclose to the opposite party what such pictures show.

Fear of impeachment does not constitute the "good cause" required under Rule 4 (now Rule 419) for the discovery of such photographs or their contents, which constitute a part of the work product of the lawyer.

Dietz v. Baltimore Transit Co., Daily Record, June 3, 1955.

Photographs — Good cause necessary to obtain.

Tsiontsiolos v. Sun Cab Co., Daily Record, Mar. 7, 1958 (*infra,* p. 33).

Entry on Land — [419b]

The court may not order a defendant to permit entry on land in an action by the government to restrain the defendants, producers of wheat, from interfering with entry on their farms by representatives of county committees for the purpose of measuring the acreage planted to wheat and to require defendants to identify such fields or acres. Such an order must be predicated upon an action, and no such action would lie. Federal Rules 27 (*Cf.* Md. Rule 402) and 34 (*Cf.* Md. Rule 419b — Discovery of Documents and Property) can be invoked only in aid of a proceeding to enforce some right which the plaintiff has, and no such claim is here presented.

United States v. Morelock, 124 F. Supp. 932 (D.C. Md., 1954).

APPEAL AND ERROR

Orders granting discovery under Discovery Rule 4 (now Rule 419) decide nothing final and appeals therefrom are dismissed.

Hallman v. Gross, 190 Md. 563, 59 A. 2d 304 (1948).

In a suit for appointment of a receiver of a corporation and for other relief, where corporation filed a demurrer questioning court's jurisdiction, an order for discovery issued while the demurrer was pending was appealable.

Eastern States Corp. v. Eisler, 181 Md. 526, 30 A. 2d 867 (1943), noted, 16 Md. L. Rev. 159 (1956).

Editorial Note: The Hallman and *Eisler* cases, *supra,* were commented on from the standpoint of appealability in 12 Md. L. Rev. 145, 151 (1951).

In a pending suit in equity the plaintiff petitioned for discovery of certain books and records under former discovery Rule 4 (now Rule 419). Held, the order denying the relief sought was not appealable, since the interlocutory denial of discovery would be presented for review on appeal from a final decree dismissing the bill.

Barnes v. Lednum, 197 Md. 398, 79 A. 2d 520 (1951).

It is a general rule that an appeal from an interlocutory order is premature. This rule has been held to be applicable to rulings in connection with discovery.

Sun Dial Corporation v. Fink, 211 Md. 550, 552, 128 A. 2d 440 (1956).

RULE 420. MENTAL AND PHYSICAL EXAMINATION

MATERIALITY OF CONDITION

Discovery Rule 5 (now Rule 420), providing that when mental condition of party is material to any matter involved in any proceeding, court may, for good cause shown, order party to submit to examination by physician, vests discretion in court to determine when mental condition is material to matter involved in proceedings.

Roberts v. Roberts, 198 Md. 299, 82 A. 2d 120 (1951).

BLOOD TEST

After answer to wife's complaint for divorce denied paternity of child, husband respondent petitioned court to pass an order requiring wife and infant child to submit to a blood grouping test. Held, petition granted, as this procedure was proper under Discovery rules.

Detorie v. Detorie, Daily Record, June 25, 1952.

Editorial Note: The above case was decided under former Discovery Rule 5. As amended, effective Jan. 1, 1957, the Rule (Rule 420) now makes clear the right to require a blood test in an action in which blood relationship is in controversy.

APPEAL AND ERROR

An order for a physical examination is interlocutory and not appealable.

Bowles v. Commercial Casualty Ins. Co., 107 F. 2d 169 (4th Cir., 1939).

Order of equity court refusing to permit examination of alleged lunatic, on petition filed under Discovery Rule 5 (now Rule 420), as a preliminary to issuance of writ of

de lunatico inquirendo, was a final order, so that appeal therefrom must be entertained. Md. Code (1951), Art. 5, Section 30. [Md. Code Supp. (1957), Art. 5, Section 6].

Purdum v. Lilly, 182 Md. 612, 622, 35 A. 2d 805 (1944), commented on in 12 Md. L. Rev. 145, 148 (1951).

Under Discovery Rule 5 (now Rule 420) the action of the Chancellor was discretionary and his order was interlocutory. It was not a final order, nor in the nature of a final order, and it is clearly not appealable.

Roberts v. Roberts, 198 Md. 299, 303, 82 A. 2d 120 (1951).

RULE 421. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS

IN GENERAL

Scope

The principal purpose of requests for admissions is to avoid wasting time and money in proving facts which are not disputed; it is not to secure information which may more appropriately be obtained by interrogatories.

Antgoulatos v. Honduran S.S. Norlandia, 139 F. Supp. 385 (D.C. Md., 1956).

A request made by the plaintiff for the defendant to admit that they had engaged a certain doctor to examine the injured plaintiff and that they "received the following report": (quoting the report) is not a request to admit the truth of the report. Thus, a failure to reply to the request did not make the report admissible in evidence.

Nocar v. Greenberg, 210 Md. 506, 124 A. 2d 757 (1956).

Truth of Relevant Facts — [421a]

Under old Discovery Rule 6 (now Rule 421) a request for admission involving a mixed conclusion of fact and law is not proper.

Randall v. Yost, Daily Record, Apr. 6, 1956.

Number

The limit of 30 interrogatories provided in Discovery Rule 2(a) (now Rule 417a2) does not apply to Requests for Admission of Fact and Genuineness of Documents provided for in Discovery Rule 6 (now Rule 421). A party who has filed 30 interrogatories may therefore without leave of court file Requests for Admission in addition, there

being no limit prescribed in the Rules as to the allowable number of such Requests.

Thurman v. Hughes & Co., Daily Record, Apr. 6, 1955.

Admissions — [*421b*]

By Failure to Deny

When the sworn statement filed in response to a request for admissions neither expressly admits nor denies a requested admission but gives reasons why the admission cannot be made, the Court "should do the fair thing in each case".

Antgoulatos v. Honduran S.S. Norlandia, 139 F. Supp. 385 (D.C. Md., 1956).

By Attorney or Agent

When a respondent admits or denies a request for admissions, it is relatively immaterial whether such admission or denial is made by an attorney or by an officer or agent, so long as it is made by a person having authority.

Antgoulatos v. Honduran S.S. Norlandia, 139 F. Supp. 385 (D.C. Md., 1956).

Interrogatory as to whether opposing party has been convicted of any crime, improper in ordinary case. In such case interrogatory inquiring as to whether opposing party has been convicted of a serious crime, should be allowed only on showing of reasonable ground therefor.

In case of false arrest and malicious prosecution, it is proper for defendant to propound to plaintiff interrogatory as to whether plaintiff has been convicted of any crime.

Covey v. Baltimore Transit Co., Daily Record, Mar. 6, 1958.*

Party may, by interrogatory, require adversary to disclose whether photographs taken of objects involved in issues of case. In absence of special circumstances he may not require adversary to disclose name of photographer, date on which such photographs were taken, contents of photographs, or name of present custodian thereof.

Under Rule 419, party may be entitled to discovery of photographs and data relating thereto, upon showing good cause therefor, provided such photographs are not barred from Discovery for other reasons, e.g., under Rule 410 d.

Tsiontsiolos v. Sun Cab Co., Daily Record, Mar. 7, 1958.*

* Editor's Note: These opinions appeared after the REVIEW was in page proof, but have been inserted under the appropriate headings (*supra*, pp. 7, 11, 17, 27, 30) and the headnote texts included here.