

amend the record by entering a release of the excess above the sum laid in the declaration.

Where the lower court is without jurisdiction to enter the judgment, the appellate court can not allow it to be amended so as to bring it within the jurisdiction of the lower court; the judgment must be reversed. *Armstrong v. Hagerstown*, 32 Md. 54.

The appellate court has no power to remit interest, same having been allowed by the jury under an erroneous instruction. *Frank v. Morrison*, 55 Md. 409.

The action of the lower court in requiring a *remittitur* to be entered, held proper. *Attrill v. Patterson*, 58 Md. 260.

This section applied. *Finch v. Mishler*, 100 Md. 462; *Marburg v. Marburg*, 26 Md. 22; *Harris v. Jaffray*, 3 H. & J. 551.

1904, art. 5, sec. 20. 1888, art. 5, sec. 18. 1860, art. 29, sec. 4.  
1811, ch. 161, sec. 4.

20. If any entry or amendments which the court of appeals may permit would require an alteration of the judgment from which the appeal is taken, the court may, on deciding the appeal, give such judgment as the entry or amendment may require.

This section applied. *Finch v. Mishler*, 100 Md. 462.  
See notes to sec. 19.

*Ibid.* sec. 21. 1888, art. 5, sec. 19. 1860, art. 5, sec. 15. 1790, ch. 42, sec. 1.

21. If an appeal shall be taken, or writ of error sued out, for several exceptions, the court of appeals shall give judgment on every exception, if a new trial is to be awarded.

If the judgment is reversed without a new trial, other exceptions in the record need not be passed upon. *Roberts v. Roberts*, 71 Md. 8; *Harris v. Register*, 70 Md. 122. And see *Boehm v. Carr*, 3 Md. 202.

Exceptions involving mere moot questions, need not be passed on. *Strouse v. American, etc., Co.*, 91 Md. 278.

*Ibid.* sec. 22. 1888, art. 5, sec. 20. 1860, art. 5, sec. 16. 1790, ch. 42, sec. 1.  
1826, ch. 200, sec. 10. 1830, ch. 186, sec. 1. 1849, ch. 88, sec. 1. Rule 8.

22. In all cases where judgments shall be reversed or affirmed by the court of appeals, and it shall appear to the court that a new trial ought to be had, such new trial shall be awarded, and a certified copy of the opinion and judgment of the court of appeals shall be transmitted forthwith to the court from which the appeal was taken, to the end that said cause may be again tried as if it had never been tried; and no writ of *procedendo*, with transcript of record, shall be transmitted, as heretofore practised.

#### Application of this section.

This section has no application where the record does not disclose a legal cause of action. *Lester v. Hardesty*, 29 Md. 55.

Where the court reverses the order of the court below in a mandamus case, but the judgment of reversal is not necessarily final, this section is applicable. *Harwood v. Marshall*, 9 Md. 107.

This section has no application where the judgment is in favor of the plaintiff and that judgment is affirmed, the defendant not having availed himself of evidence which he might have produced at the trial. *McKee v. McKee*, 16 Md. 521. And see *Manning v. Hays*, 6 Md. 10.

For a full discussion of when this section operates, see *Archer v. State*, 74 Md. 432; *Farmers' Bank v. Bowie*, 4 Md. 295; *Kennerly v. Wilson*, 2 Md. 259.